TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 221.

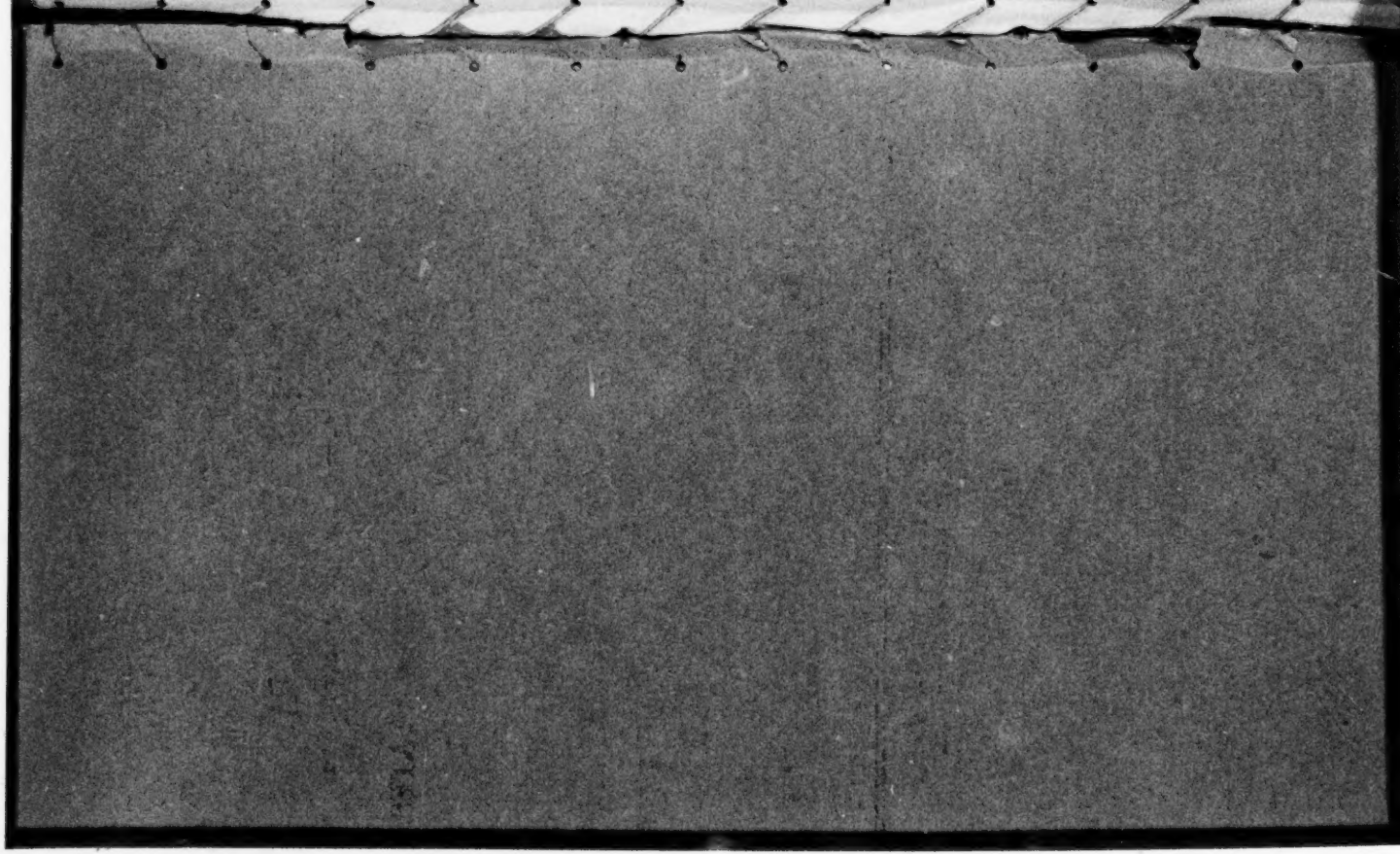
COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK, PETITIONER,

vs.

GITTEL GOTTLIEB AND ISRAEL GOTTLIEB.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1923.
CERTIORARI AND RETURN FILED MARCH 24, 1923.



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Writ of Habeas Corpus. 1

HIS EXCELLENCY, WARREN G. HARDING, PRESIDENT OF THE UNITED STATES OF AMERICA.

TO COMMISSIONER OF IMMIGRATION, at the Port of New York, or any other person having charge, custody or control of the bodies of GITTEL GOTTLIEB and ISRAEL GOTTLIEB, GREETING:

WE COMMAND YOU, that you have the bodies of GITTEL GOTTLIEB and ISRAEL GOTTLIEB 2

Hab. Corpus To Bring Up Person.

by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name they shall be called or charged before the United States District Court Southern District of New York, at the Court House Post Office Building, Broadway and Mail Street, Borough of Manhattan, City of New York, on the 19th day of January, 1922, at 10:30, A. M. 3

to do and receive what shall then and there be considered concerning them and have you then there this writ.

WITNESS, Hon. Learned Hand, U. S. District Judge the 18th day of January, one thousand nine hundred and twenty-two.

ALEX. GILCHRIST, JR.,
Clerk.

J. G. M. BROWNE,
Relator's Attorney.

4

The within Writ is hereby allowed.

Dated, Jan. 18, 1922.

(Sgd) J. W. MACK,
U. S. C. J.

Petition for Writ of Habeas Corpus.

UNITED STATES DISTRICT COURT,

5

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, against THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW York, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	M7/17.

6

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Joshua Lerner, respectfully shows:

1. That he is a citizen of the State of New York, and of the United States of America, and is the General Secretary of the United Charity Institutions of Jerusalem, whose office is at #179 East Broadway, Borough of Manhattan, City of New York.

2. That your petitioner is acquainted with Rabbi Solomon Gottlieb, who is the husband of the above named Gittel Gottlieb, and who is also the father of the above named Israel Gottlieb.

3. That the said Solomon Gottlieb is now ill, and confined to his bed, by reason whereof he is unable to personally make this application, and for and on behalf as well of the above named relators, and your petitioner alleges that he has been duly authorized by the said Solomon Gottlieb to make this petition, and to apply to this Court for the writ of habeas corpus now sought on behalf of the relators, and hereby now applied for, and for the further reason that the relators, as your petitioner is informed, are now aboard the steamship "Rome," which is about to sail, and it is impossible in the interval to procure their signatures to the petition herein.

4. Your petitioner further alleges upon information and belief, that the above named Solomon Gottlieb is a legally admitted alien resident of the United States, and arrived in this Country from Palestine, Jerusalem about sixteen months ago, and that he now resides at #81 Avenue C, in the Borough of Manhattan, City of New York, Southern District of New York, and is engaged as a Rabbi of a Synagogue known as the Synagogue

10 Gewial Chesed, at #100 Cannon Street, in the Borough of Manhattan, City of New York, under contract for three years, at a salary of Two thousand Dollars ($2,000) per year, and duly filed his declaration to become a citizen of the United States of America.

5. Upon information and belief that the said Gittel Gottlieb is twenty-eight years of age, and the said Israel Gottlieb is five years of age.

11 6. Upon information and belief that the above named relators heretofore duly applied to the American Consul at Palestine, Jerusalem, for a vise of passport for permission to enter the United States of America, stating at the time that it was their purpose to come to the United States of America to permanently reside here with the said Solomon Gottlieb, and that he, the said Solomon Gottlieb had sent for them to come to this Country for such purpose, and that at such time the said Solomon Gottlieb was a legally admitted alien resident of the United States, and that the law
12 respecting the quota of aliens from said Country entitled to enter the United States had not then become effective.

7. Upon information and belief that subsequent to receiving such vise of passport, the relators sailed from Alexandria, Egypt, to Cherbourg, France, en route for the United States of America aforesaid, and were there arbitrarily and improperly detained so as to prevent them from sailing upon a vessel which would arrive in the United States of America prior to such quota being exceeded, and to thereby so detain them that upon

their arrival in the United States of America, such quota would then have been exceeded. 13

8. Upon information and belief that the above named relators arrived at the Port of New York, in the United States of America on the Steamship "Providence" of the Fabre Line, on or about the 27th day of December, 1921, and that after a hearing before the Board of Special Inquiry at Ellis Island, New York, they were ordered deported, upon the ground that the quota of immigrants entitled to be admitted to this Country had been exceeded. 14

9. Upon information and belief that the above named relators maintained before the said Board of Special Inquiry that their deportation upon said ground was unauthorized and improper, for the reason that at the time they had received their vise of passport entitling them to come to this Country, that the law respecting the quota had not become effective, and that they had been arbitrarily delayed and detained for the reasons aforementioned, and that their exclusion upon that ground was unlawful. 15

10. Upon information and belief that other aliens coming from the same Country, under the same conditions and upon the same vessel, were admitted into this Country upon their arrival here, by the said Board of Special Inquiry at the same time that the relators were excluded.

11. Upon information and belief that the said relators were never informed that they could enter this country under bond.

16

12. Upon information and belief that the said Board of Special Inquiry nevertheless excluded said relators, and that thereupon an appeal was taken from such determination, to the Secretary of Labor, and that the determination ordering such deportation was affirmed.

13. Upon information and belief that the decision affirming such determination of the Board of Special Inquiry was only received over the long distance telephone a short while ago, and that said
17 relators are now aboard the steamship "Rome" of the Fabre Line, which sails at 3 o'clock P. M., today.

14. Upon information and belief that the said Solomon Gottlieb is financially able to support and maintain the said relators, and that there is no likelihood of their becoming public charges.

15. Upon information and belief, your petitioner alleges that by reason of the facts and circumstances above set forth, that the determination of
18 the Board of Special Inquiry ordering the deportation of the said relators, and the affirmance of their determination by the Secretary of Labor, was and is an abuse of discretion and excess of power, for the reason that the provisions of the Immigration Laws are not applicable to the relators by reason of their relationship to the said Solomon Gottlieb as a legally admitted alien resident of the United States, as a Minister of the Jewish Faith, and for the reason that such detention to prevent the arrival of the relators in this Country prior to the quota aforesaid being exceeded, was a fraud upon the relators and in violation of their rights.

16. Upon information and belief that the said relators have not been committed or detained by virtue of a mandate issued by a Court or Judge of the United States, or by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause, nor for any act constituting a contempt of court, or by virtue of an execution or other process issued upon such judgment, decree or final order.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein, directing the respondent to have the bodies of the said Gittel Gottlieb and Israel Gottlieb, relators, together with the time and cause of their detention and deportation, by whatsoever name they shall be known, called or charged, before this Court, to show cause why the said relators should not be admitted into the United States of America, and to do and receive what is then and shall be considered concerning them.

That no previous application has been made.

Dated, New York, January 18th, 1922.

(Signed) J. LERNER,
Petitioner.

22

United States of America,
Southern District of New York, } ss.:

Joshua Lerner, being duly sworn, deposes and says: that he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

23

(Signed) J. LERNER.

Sworn to before me this
18th day of January, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007.
Bronx Co. Clk's No. 4; Reg. 2903.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

24

Return to Writ of Habeas Corpus. 25

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, 26

Respondent.

Southern District of New York, ss.:

John M. Lyons, being duly sworn, says that he is and during all the times herein mentioned has been an immigrant inspector in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein. 27

In compliance with the direction of this Court, the bodies of the said aliens in their own proper persons are produced herewith before this Court at the time specified in the writ.

28

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was issued the warrant of deportation pursuant to which the said aliens are held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which
29 this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusion of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclu-
30 sion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegations of facts that the issues sought by the petition now to be litigated in this Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the

31

above named aliens, copies of which are produced and filed herewith as part of this return;

(1) On December 30, 1921, the aliens herein, Gittel Gottlieb and Israel Gottlieb, were duly accorded a hearing before the Board of Special Inquiry held at Ellis Island, New York Harbor, New York. Upon the said hearing, proceedings were had, testimony taken and other evidence introduced as appears by the minutes of the said hearing, a copy of which is hereto annexed and made a part of this return. The said Board found that 32
the aliens herein were natives of Palestine and the Board unanimously and duly excluded the aliens herein as coming to the United States in violation of the Act of May 19, 1921, in that they are natives of a country, to wit, Palestine, whose quota has been filled.

(2) As appears by the minutes and exhibits aforesaid, the said aliens were duly informed and apprised of the charges against them; the said aliens were afforded a full, complete and fair hearing by the Department of Labor upon said charges; 33
the said aliens were afforded a full, complete and fair opportunity to answer and to submit evidence upon such charges; there was before the Department of Labor evidence to sustain each of said charges; the Department of Labor duly found that the charges were sustained; and said charges were in fact fully sustained by the proofs that were before and were considered by the Department of Labor.

(3) The proofs and record of the proceedings before mentioned having been duly transmitted to

34 him, the Secretary of Labor duly affirmed the excluding decision of the Board and directed the deportation of the said aliens on January 18, 1922; and for cause of the detention of the said aliens complained of in the petition herein, deponent says that the said aliens are and since the receipt of said warrant of deportation have been held under and in obedience to said warrant of deportation.

The respondent, upon information and belief denies each and every allegation of the petition herein except as to what is admitted in the return filed
35 herein.

WHEREFORE deponent prays that the writ of habeas corpus herein be dismissed and that the said aliens remanded to the custody of the Commissioner of Immigration at Ellis Island, New York, to be dealt with in accordance with the said warrant of deportation.

JOHN M. LYONS.

Sworn to before me this
36 26th day of January, 1922.

SAML. M. HITCHCOCK,
U. S. Commissioner,
Southern District of New York.

37

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

Office of
Commissioner of Immigration
Ellis Island
New York Harbor, N. Y.

98824/792

January 5, 1922.

Commissioner-General of Immigration,
Washington, D. C.

38

In re: Gittel Gottlieb, 24, and child, Israel, 4. Natives of Palestine; where parents reside; reads; husband in U. S. paid passage; housewife; never in U. S.; going to husband and father, in New York City; ex SS "Providence" December 27, 1921, S. I. No. 10.

EXCLUDED; EXCESS PALESTINE QUOTA.

No attorney; brief of H. I. A. S. attached. Congressman L. W. Parish interested.

These aliens intended to go to the husband and father in New York City; he appeared in their behalf; he has resided here fourteen months, is a declarant, is rabbi of a congregation from which he derives an income of $2000 per year; he appears to have $950 in securities. 39

Mail decision; next sailing January 18th.

Affirm excluding decision.

(Sgd) H. R. Landis,
Assistant Commissioner,
BSI & Appeals.

L:FMP
Encl. No. 8612.
Copy FXK

40

N. Y. Form 192

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

157 LGS

NAMES OF ALIENS:
GOTTLIEB, GITTEL 24f-m
ISRAEL 4m-child
HEBREW-PALESTINE.

41

Before a
Board of Special Inquiry
held at
Ellis Island, New York Harbor, N. Y.

December 30, 1921, 11:10 a. m.

Present—Insps. MCCULLOUGH (Chmn).
Toner & Felstyner,
Int. Volovick.

SI 10—SS "Providence" Fabre Line, Dec. 27—
42 Marseilles.
Excess quota, Palestine—Insp. McGlynn. II Cabin.

ALIEN, sworn, testified:

Natives and residents of Jerusalem, Palestine where I have father Pinchas and mother Malke Schonberger, in good health.

Read; my husband Solomon in US paid passage; housewife; never in US.

43

Going to husband, 100 Cannon Street, New York City.

$25.00; teleg. to call, paid 35c.

Coming to join husband and remain permanently.

Passport for two issued by the Government of Palestine at Jerusalem, May 19, 1921, and vised at Jerusalem by American Consul, May 23, 1921, "vise good only for 60 days."

Never debarred or deported from the US or Canada.

44 Q. How long is your husband in the US? A. One year.

Q. Why did you not accompany him to America? A. We did not have enough money.

Q. Have you any other children? A. No.

Q. Has your husband contributed toward your support since he is here? A. Yes.

Q. Were you advised by the American Consul or any representative of the steamship company, that you might be denied admission to the US because the quota allotted to the country of your birth, had become exhausted? A. No.

45 Q. Why is it your passport shows a vise by the American Consul which was good only for sixty days? A. I did not get any explanation of this. They were all made that way.

Q. At the time you secured your passport at Jerusalem, did you state you were coming to the US to reside permanently? A. I was told at the American Consul that I must leave Palestine within 60 days if I want to make use of the vise. If I did not leave within that time, the vise will not be good.

Q. What was the date that you obtained your passport? A. First day of Sivon. (Interpreter

46 Volovick states this is about the end of May, or early part of June.) I departed from Jerusalem eight days after the vise of my passport and went to Alexandria, Egypt, where I was waiting for a ship to France.

Q. From Alexandria where did you go? A. To Marseilles and from there to Paris and then to Cherbourg.

Q. Why were you detained from June until December,—six months, in securing transportation to America? A. Our passage was delayed from
47 ship to ship, by the steamship companies who were telling us we could not go this month and told us to wait until next month and so put us off until now and I became disgusted and went to Marseilles and obtained passage on another steamship line.

Q. Did the steamship agents give any reason for putting you off? A. They were telling us that there was no room; on another occasion that we had to wait for the quota facilities and never gave us any good reason.

Q. Were you then not notified that the quota was exhausted from your native country? A. I was
48 told that in Cherbourg, after being detained so long. In Marseilles, to the same inquiry, I was told since my husband is a Clergyman, I could come to the United States.

(Shows letter from the Congregation Owiles Cheased, K. U. V., 100 Cannon Street, New York, dated May 10, 1921, indicating an agreement made between the Congregation, a religious corporation, and Rabbi Solomon Gottlieb, showing that he was to preach for the Congregation for a period of three years from date. He is to receive a salary of $2,000 and it is understood between both parties

49

that Rabbi Gottlieb shall bring his family to the United States within a period of six months from date. Signed, 10th day of May, 1921.

ALEX SPIRTZ, President.
Solomon Gottlieb,—Seal of Corporation.)

(Mr. S. F. Strothers, representing the Department of State makes the following statement:

The vise in question, No. 540, granted at Jersualem, and bearing notation that it is valid "for only sixty days," is at law, valid for one year, being in 50
fact a $10.00 vise. Consular officers have now been instructed by the Department of State not to limit these vises in terms such as this vise is limited.)

Witness, sworn, testified thru Int:

Q. What is your name? A. Solomon Gottlieb, 165 Attorney Street, New York, living care of Mr. Bach.

Q. For whom do you call? A. My wife and 51
child (names them).

Q. How long have you been in America? A. 14 months.

Q. Have you been contributing to the support of your wife and child? A. Yes.

Q. Did you write them to come and pay their passage? A. Yes.

Q. Have you declared your intention to become a citizen? A. Yes.

(Shows declaration of intention, No. 98474, in the name of the witness, issued in the Eastern District Court of the US, May 10, 1921.)

52

Q. What is your business or occupation? A. Rabbi in the Congregation at 100 Cannon Street, New York.

Q. What is your salary? A. $2,000 a year salary and besides other income.

Q. What money have you saved since coming here? A. $700 cash and $300 in Liberty Bonds. (Shows Check for $200 and $450 money.)

Q. Have you a home prepared for your family? A. Not yet, but my family will go to me at my friend's house where I now live and later I will

53 get an apartment.

Q. Why didn't your wife and child come with you to the US A. I did not have enough money.

Q. Had you been informed that natives of Palestine would not be permitted to enter, being in excess of the quota allotted to that country? A. When I sent the affidavits, the law of the quota had not been in effect and the vise was put on the passport before the law was enacted, so I did not know anything about them.

Q. If permitted to enter at this time, what would you do for them? A. I will establish a home for

54 my wife and child and support them.

Q. Will you send the child to school when it becomes of age, until it reaches 16 years? A. Yes.

Insp. Toner: I move that the aliens be EXCLUDED as coming to the US in violation of the Act of May 19, 1921, in that they are natives of a country whose quota has been filled.

Insp. Felstyner: I second the motion.

Chairman: Unanimous.

(To the alien, in presence of witness): You and your child have been excluded as coming to the US

55

in excess of the quota allotted to the country of your nativity. You have the right to appeal to the Hon. Secretary of Labor, to review the evidence taken here and decide whether you shall be admitted or debarred. His decision is final. Do you wish to appeal? A. Yes (Signs appeal).

Q. If deported, it will be at the expense of the steamship company which brought you here, in the same class that you arrived. Do you understand? A. Yes.

EXCLUDED AND ORDERED DEPORTED. 56

LOUIS G. SCHWARTZ,
Secretary.

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE.

Office of
Commissioner of Immigration
Ellis Island
New York Harbor, N. Y.

Ellis Island File No.
98824/792 57

January 18, 1922.

NOTICE OF DEPORTING DIVISION OF DECISION ON APPEAL.

In accordance with telephonic instructions from the Bureau dated Jan. 18, 1922, proceed as directed with the aliens described below:

S. I. No.	Steamship:	Action and Names:
10	Providence 12/27/21	Deport Gitel Gottlieb and child Israel

(Sgd.) H. R. Landis, Commissioner
in charge B. S. I. and Appeals.

58

Instructions to Messengers:

Deliver pink copy to Deporting Division and green copy to Information Division.

HCS
Copy FXK

Traverse.

59 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

60 Respondent.

Traverse to the Return to the Writ of Habeas Corpus.

United States of America,
Southern District of New York, } ss.:

Solomon Gottlieb, being duly sworn, deposes and says: That he is the husband of the above named relator Gittel Gottlieb, and the father of the above named relator Israel Gottlieb.

61

That heretofore and on the 18th day of January, 1922, as your deponent is informed and verily believes, upon a petition duly presented to this Court on behalf of the above named relators, the Hon. Julian W. Mack, Circuit Judge, duly issued a writ of habeas corpus directed to the above named respondent, to produce the relators before this Court pursuant to said writ. That pursuant to the said writ of habeas corpus, the respondent has made a return to this Court, and therein it is alleged, among other things, that the said relators, on December 30th, 1921, were afforded a hearing before 62
the Board of Special Inquiry held at Ellis Island, N. Y. H., and that upon the said hearing, proceedings were had, and that the said Board found that the relators were aliens and natives of Palestine, and were unanimously excluded as coming to this country in violation of the Act of May 19th, 1921, in that they are natives of a country, to wit, Palestine, whose quota has been filled. That the said relators were duly informed and apprised of the charges against them, were afforded a full, complete and fair hearing by the Department of Labor upon said charges, and an opportunity to an- 63
swer the same. That said charges were found to be sustained, and that the determination of the Board of Special Inquiry was affirmed by the Secretary of Labor, and that the relators are now held under a warrant of deportation.

Deponent on behalf of the relators traverses the return to the said writ of habeas corpus, and alleges that the said relators are unable to personally file said traverse for the reason that they are now detained at Ellis Island, and, as deponent is informed by relators' counsel, he has not been able to have

64 said relators personally traverse the said return, for which reason the same is made by deponent on their behalf.

Deponent challenges the return herein on the ground that the relators were not accorded a full, fair and complete hearing, as deponent is informed by the attorney for said relators, to wit, that the said relators were entitled to apply for temporary admission under bond, upon showing that such temporary entry is an urgent necessity, or that unusual and grave hardship would result from a de-
65 nial of their request, as provided by the 9th proviso of Section 3 of the Act of February 5th, 1917, and Subdivision 2 of Rule 16 of the Immigration Rules.

Deponent further alleges, upon information and belief, that the minutes of the hearing before the Board of Special Inquiry do not recite that the said aliens were informed of their right to temporary admission under bond, or of their right to show that an urgent necessity for such entry exists, and that grave hardship would result from a denial of their request.

AS AND FOR NEW MATTER, your de-
66 ponent alleges, on behalf of the said relators, that urgent necessity for their temporary admission under bond does exist, and that grave hardship would result from a denial thereof for the following reasons; that the said relators have not had any permanent place of abode ever since they left to come to the United States of America, after their application to have their passport vised by the United States Consul at Palestine, Jerusalem had been granted, and have travelled from Jerusalem to Alexandria, Egypt, from there to Marseilles, France, from there to Cherbourg,

France, and from there to the United States of America. That as a result thereof they have endured great inconvenience and great mental distress, and that if the said aliens are returned to Jerusalem, that they will have no place to go, as your deponent is informed by his wife, the relator Gittel Gottlieb, that she does not now know where her parents are, or where they may be found, and that she has no means wherewith to sustain herself and the infant relator Israel Gottlieb, and that there is grave danger that such return may impair their health and subject them to conditions beyond their control. 67 68

Deponent believes that if the said relators had been informed of their right to apply for temporary entry under bond, that upon these facts being called to the attention of the proper officials, that they would have been granted a temporary entry under bond, and that thereby the relators would have been enabled to be with deponent, and receive the comfort and protection of his society, and would be enabled to derive the benefits of family association, which have been denied them by reason of the failure of the Board of Special Inquiry to inform them of their right to apply for such temporary entry under bond. 69

Deponent therefore alleges that the exclusion of the relators, without their being accorded the said privilege, and for the reasons set forth in the petition, and the refusal to admit the said aliens under bond, that the issuance of the warrant of deportation was and is an abuse of discretion and an excess of power.

WHEREFORE deponent respectfully prays that the said writ be sustained, and the relators be per-

70 mitted to enter this country unconditionally, or, in the alternative, if the Court should determine that the said relators are not entitled to enter unconditionally, that they be permitted a temporary entry under bond, upon such terms and conditions as to the Court may seem just and proper in the premises.

SOLOMON GOTTLIEB.

Sworn to before me, this
26th day of January, 1922.

71

HARRY COHAN,
Commissioner of Deeds,
City of New York,
N. Y. Co. Clk's No. 19; Reg. No. 2007,
Bronx Co. Clk's No. 4; Reg. No. 3006,
Kings Co. Clk's No. 3; Reg. No. 3007,
Term expires Jan. 25, 1923.

72

Supplemental Traverse. 73

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, against THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	Supplemental Traverse to Return to Writ of Habeas Corpus. 74

United States of America,
Southern District of New York, } ss.:

75 Gittel Gottlieb, being duly sworn, deposes and says: That she is one of the above named relators, and that the relator Israel Gottlieb is her son, and is about five years of age.

An application was heretofore made on behalf of deponent and her said son, the said Israel Gottlieb, for a writ of habeas corpus, directed to the above named respondent, to show cause why your said relators should not be released and permitted to enter the United States, your relators having theretofore been ordered deported and placed upon the Steamship "Rome" for deportation.

76 That in the said petition for said writ of habeas corpus, it was, among other things, alleged, as deponent is informed by her attorney herein, that the relators were never informed that they could enter this country under bond, and in the traverse to the return to said petition, it is further set forth, as deponent is informed that urgent necessity for the temporary admission of the relators under bond exists, and that grave hardship would result from a denial thereof.

77 Deponent, on behalf of said relators, and supplementing the allegations set forth in the said traverse to the return in the respect aforementioned, further states that if the relators were not to be temporarily admitted under bond, that grave hardship would result, and that urgent necessity exists, because of the fact that deponent's parents are about sixty-five years of age, and that at the time that deponent left, they were without means of support, and deponent has not heard from them, although she wrote to them from Paris over three months ago, and the usual time for mail to arrive is about five or six weeks.

78 Deponent further states that the safety of persons of the Hebrew faith in Jerusalem is in great peril. That shortly before the relators left, there was an uprising at Jerusalem, usually called a Pogrom. That such uprising was directed exclusively against the Jewish population, and that many Jews were killed and wounded. That deponent saw many wounded persons of the Hebrew faith lying in the hospital, and lying on the streets, and that all the Jewish population in Jerusalem had to hide, together with their children, so as to escape the attack upon them, such attack being partici-

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pated in by Arabs and Turks. Deponent hid with her son, the said relator Israel Gottlieb, in a cellar, for three days, after which time the uprising subsided, and deponent immediately went to the American Consulate at Jerusalem, to have her passport vised.

Deponent further says that because of the conditions there, she was obliged to and did abandon all of her belongings, except a few personal effects. That she explained to the American Consul her desire to come to this country, and also to escape the said uprising, with which uprising the American 80
Consul was familiar.

Deponent further says that in the said uprising, Hebrew students were killed; that the Scriptures were burnt up, and that the Hebrew College was set afire, in consequence of which many persons were burnt to death, and some killed as they were fleeing from the building. That deponent saw many persons of the Hebrew faith lying dead on the streets.

That the conditons in Jerusalem are such that persons of the Jewish faith are afraid to walk upon the streets; that the doors and windows are barred, 81
and that no business was done at that time, and for some time prior thereto in the Jewish section there. That for the first two or three days of the uprising, nothing was done to suppress it. That most of the police are Arabs, and that they participated and helped in the said uprising. That the throwing of stones into the houses of persons in the Jewish quarter, and upon the persons themselves is a matter of frequent occurrence, and that pilfering is constantly going on. That the Arabs and Turks have attacked and ravished women and girls of the

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Hebrew faith, and that in the main, the Arab police have been the participants.

Deponent respectfully submits that the relators herein were greatly jeopardized by the failure of the Board of Special Inquiry to inform them of their right to apply for temporary admission under bond, for the reasons aforesaid, and further states that so far as deponent knows, the same conditions control, and that deponent and her infant son will run the same risk and danger in the event that they are obliged to return there.

83 Deponent further says that in support of the statements above set forth with regard to the statements as to conditions prevailing in Jerusalem, deponent has procured the affidavits of Solomon Mandel and Simon Schlesinger, which deponent annexes hereto, and makes a part of the supplemental traverse herein.

WHEREFORE, deponent respectfully prays that this supplemental traverse to the return to the said writ of habeas corpus may be considered by the Court.

84

GITTEL GOTTLIEB,
in Jewish.

Sworn to before me, this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
(Seal) City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 2007,
Bronx Co. Clk's No. 4; Reg. No. 3006,
Kings Co. Clk's No. 3; Reg. No. 3007,
Term expires Jan. 25, 1923.

85

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

86

United States of America,
Southern District of New York, } ss.:

Solomon Mandel being duly sworn, deposes and says: That he is 21 years of age. Deponent states that he knows the relator Gittel Gottlieb, and first became acquainted with her in Jerusalem, Palestine. 87

That your deponent is familiar with the conditions prevailing there, and that your deponent left Jerusalem on or about the 9th day of November, 1921, and arrived in the United States of America on or about December 10th, 1921, and that your deponent was permitted to enter the United States.

Deponent states that with regard to the conditions in Jerusalem, respecting the Jewish population there, that said conditions are such that it is absolutely unsafe for such persons to remain there. Deponent has known of two of the uprisings that have taken place in Jerusalem, and that deponent

88 actually saw several Jews slain by Arabs with knives. That deponent also saw buildings used by the Jews for religious purposes set on fire and destroyed. Deponent also saw many persons of the Hebrew faith lying wounded at the American Zionist Medical Corps Hospital at Jerusalem.

That robbery of the Jewish residents is frequent, and that women and girls of the Jewish faith have also been attacked and ravished. Deponent states that the conditions there are such that it is absolutely unsafe for persons of said faith to walk upon
89 the streets, and that business there is at a standstill because of the fear of attack. That such attacks are directed only against persons of the Jewish faith.

That about four or five days after the said uprising, deponent left to sail for the United States, and that conditions were so bad and grave that it was necessary to have official protection by way of escorting said persons to the pier where they were about to embark.

Deponent states that he has been informed that this affidavit has been sought for corroboration of
90 the allegations made by the said relator Gittel Gottlieb as to conditions prevailing in Jerusalem, and deponent therefore makes said affidavit to aid the Court, and without any other interest whatever in the application herein.

SOLOMON MANDEL.

Sworn to before me this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007.
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

91

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

92

United States of America,
Southern District of New York, } ss.:

Simon Schlesinger, being duly sworn, deposes and says: That his occupation is that of Rabbi of the Jewish faith. That deponent is thirty-nine years of age. Deponent arrived in the United States on or about the 27th day of January, 1922, and was admitted to enter the country. Deponent came from Jerusalem leaving there about December 15, 1921. 93

Deponent states, that with respect to the conditions that prevail there regarding the Jewish population they are such that it is absolutely unsafe for persons of such faith to reside there. That there have, to deponent's knowledge, been two pogroms directed only against the persons of said faith, in

94 which the Arabs have participated. That persons of the Jewish faith have been killed and wounded. That deponent saw the dead bodies carried through the streets, the said persons having met their deaths through being stabbed. That a great number of persons of said faith were lying about wounded.

With respect to the pogrom which occurred in May, 1921, an attack was made upon the Hebrew College there, and that the same was burnt and totally destroyed. That robbery is of frequent occurrence and is directed only against persons of the
95 Jewish faith. That stores and residences have been pilfered and everything taken therefrom, and that the attacks are so frequent that the Jewish residents are obliged to live behind barred doors and windows.

That after the pogrom in May, 1921, the Jewish College was rebuilt, but in the pogrom which occurred in November, 1921, the College was destroyed by bombs and the Sexton stabbed to death. During the said attacks the Arabian police looked on without once interfering.

Deponent recalls specifically being informed of
96 an instance where a Jewish engineer was coming from the Court house in Jerusalem, and seeing the uprising requested police protection. That two Arabian police were assigned to escort him, and that when some of the Arabs attempted to attack him, he attempted to defend himself with a weapon which he had, but that the said Arabian police, instead of protecting him, took said weapon from him and permitted him to be very seriously injured.

That women and girls of said Hebrew faith have been attacked and ravished by Arabs without police interference, and that women and girls who have no

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men folks living with them are living in constant fear and terror. That during the pogroms, the conditions were such that the young men of the Jewish population kept guard in shifts during the night and day, to warn the populace of any impending attack, and that conditions are so bad that the Jewish population is actually sitting with their souls in their hands.

Deponent states that he has been informed of the application made by the relators herein for their release, and has been requested to inform this Court of such conditions as he knows have prevailed in 98
Jerusalem, and to that end deponent has made this affidavit to aid the Court, and with no interest whatever in the application herein, except as aforestated.

SIMON SCHLESINGER.

Sworn to before me this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 23007. 99
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 3007.
Term expires Jan. 25, 1923.

100

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or any other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

101

United States of America,
Southern District of New York, } ss.:

102 Simon Samet, being duly sworn, deposes and says: That he is thirty-two years of age, and is a Rabbi by profession but is at the present time engaged as collector for the Universal Jewish Orphans Home for Girls in Jerusalem, which has its offices at #193 Henry Street, New York City.

Deponent states that he arrived in this country in or about July, 1920. That prior to that time deponent had resided in Jerusalem, and that with respect to conditions there prevailing regarding the Jewish population, deponent states that conditions are such that people of the Hebrew faith are living in fear of their lives.

Deponent was heretofore a student in a Jewish College at Jerusalem, and was one of the victims of the progrom which occurred in April, 1920. Every year it is a custom for the Arabians to parade to a Shrine at which they worship and on that occasion, deponent was on his way home from the College, when he was accosted by an Arabian police officer, who was a neighbor of his, and who advised deponent to seek shelter from the Arabians, as they were attacking any Jewish people whom they chanced to meet while on their way to the Shrine. Deponent was unable to return home immediately, owing to the fact that the Arabians were then coming in his direction, whereupon he sought shelter in the store of his brother-in-law. As deponent attempted to enter the store, several of the Arabians violently assaulted deponent, striking him with terrific force on the side of the head with an iron bar used to bolt the door of the store, and stabbing deponent in the leg with a knife. That deponent fell seriously injured and bleeding profusely. The pain was terrific, but deponent was warned not to moan for fear that it would arouse the Arabs to greater fury. Deponent's brother-in-law thereupon locked his store, in the meantime, upon the advice of an Arab friend, fled from the store and hid elsewhere. Deponent was then carried to another quarter of the City where deponent's brother-in-law had a friend, and while there seated on a chair receiving emergency treatment, deponent was again assailed by Arabs who beat him frightfully with sticks. An Arab officer happened to be present, and warned the assailants not to attack deponent, but they refused to do so, whereupon the officer drew his pistol and

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106 threatened to shoot, but did not do so; deponent's assailants in the meantime shouting "the Jews are dogs and Palestine is ours." Deponent further says that the Arabs then proceeded on to the Jewish quarter, robbing and destroying property of the Jewish populace, and ravishing women, and deponent knows two who were so attacked while their parents were away. Their brother attempted to defend them, but was struck on the head, splitting it open.

107 The attack upon the Hebrew populace was of such a vicious character that in one instance, as deponent is informed, a Jewish student, who attempted to defend himself from the Arabs, was found lying dead on the street, with numerous nails hammered into his head. Deponent further says that he also learned that an English officer, who was a Jew, had also been slain.

Deponent was taken to the hospital to be treated for his injuries, and there learned that the attack lasted for three days, and was of so severe a character that 220 persons of the Jewish faith were wounded and 11 killed.

108 Deponent states that he is married and has a wife and four children who he left in Jerusalem, and that he has received a letter from his wife, informing him that since the time of the progrom in which deponent was injured, there have been two other progroms of such violence, that the people of the Jewish faith have been obliged to flee, and that deponent's wife was obliged to flee from the City and compelled to hide for three days.

Deponent further says that as a result of the injuries which he sustained at the time of the progrom aforementioned, he has been rendered per-

manently deaf, and is still suffering from the stab wounds. 109

Deponent further says that he has been informed of facts relating to the conditions prevailing in Jerusalem, which have been submitted to the Court upon the application of the relators herein, and has been requested to make this affidavit for the purpose of informing the Court as to the conditions which he knows of his own personal knowledge, and aiding it with respect to the determination of the application of the relators herein, and deponent further says that he has no interest in 110 the application herein, other than to put before the Court the facts as to conditions prevailing there as aforesaid.

SIMON SAMET.

Sworn to before me, this
8th day of February, 1922.

HARRY COHAN,
Commissioner of Deeds,
City of New York.
N. Y. Co. Clk's No. 19; Reg. No. 25507. 111
Bronx Co. Clk's No. 4; Reg. No. 3003.
Kings Co. Clk's No. 9; Reg. No. 5007.

112 **Opinion.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Relators,

against

113 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,

Respondent.

J. G. M. BROWNE, Attorney for Relators; J. G. M. Browne, B. E. Kopelman, of Counsel.

114 WILLIAM HAYWARD, U. S. Attorney, Attorney for Respondent; John Holley Clark, Jr., James C. Thomas, Jr., Assistant U. S. Attorneys; John M. Lyons, of Counsel.

MEMORANDUM OPINION.

MACK, Circuit Judge:

The relators are the wife and child of a resident of the United States who had declared his intention to become a citizen of the United States, and who, at the time of their arrival in this country,

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was the minister of a congregation at a salary of $2,000 per year.

The sole ground of exclusion was that the quota allowed to their native land had been exceeded long prior to their arrival.

The American Consul had vised their passports a few days after the Act of May 19, 1921, had been passed and before it went into effect.

(1) The issuance of the passport and the granting of the vise gave to the relators no vested rights. Under the law their admissibility depend- 116
ed upon the situation at the time of the arrival in this country. The language of the law is clear; the power of Congress in this respect is not questioned.

(2) The Immigration Act of February 5, 1917, is the controlling law. Section 4 of the Act of May 19, 1921, expressly provides "that the provisions of this Act are in addition to and not in substitution for the provisions of the Immigration Laws." Under Section 3 of the Act of February 5, 1917, neither ministers nor their legal wives or 117
children under sixteen who accompany them, or who subsequently apply for admission to the United States, are within the exclusion provisions.

Under the Act of May 19, 1921, Section 2D, ministers of any religious denomination are excepted from the quota provisions.

The question before me is whether, fairly interpreted, the Act of 1921 is to be construed so as to limit the exemption to ministers, or more broadly so as to include, as does the Act of 1917 in express words, the legal wife or children under sixteen years of age, of a minister.

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In my judgment, the entire scope of the legislation prevents the narrow interpretation. The separation of a man from his family is concededly a great hardship and dangerous to the welfare of society. The reasoning of the Supreme Court, in *Holy Trinity Church* vs. *U. S.*, 143 U. S., 457, 461, is applicable here. I believe that the Act of 1921, interpreted in the light of the controlling Immigration Act of 1917, should be construed so as to include within the exceptions from the quota provisions the wife and children under sixteen of a

119 minister, as well as the minister himself.

It is, therefore, unnecessary to pass upon the other contentions. The relators will be discharged.

March 3, 1922.

J. W. MACK,
U. S. Circuit Judge.

120

Order Sustaining Writ. 121

At a Term of the District Court of the United States, for the Southern District of New York, held at the Court House, in the Post Office Building, Broadway and Mail Street, said District, on the 13th day of March, 1922.

Present—Hon. JULIAN W. MACK, Circuit Judge.

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ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators,

against

THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.

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The petition of Joshua Lerner, dated and verified, respectively, the 18th day of January, 1922, having been duly presented to this Court on said day, praying that a writ of habeas corpus issue herein, directing the respondent to have the bodies of the above named relators Gittel Gottlieb and Israel Gottlieb, together with the time and cause of their detention and deportation, by whatsoever name they shall be known, called or charged, be-

124 fore this Court, to show cause why the said relators should not be admitted into the United States of America, and to do and receive what is then and shall be considered concerning them, and this Court having upon said petition duly issued and allowed its writ of habeas corpus on the said 18th day of January, 1922, directed to the above-named respondent, and the said relators having been duly produced before this Court by the said respondent, in obedience to the command of the said writ, and application having been duly made to this Court
125 for the admission and release of the relators from the custody of the respondent pending the determination of this proceeding, and said application having been granted, and an order duly made and entered on the 4th day of February, 1922, admitting and releasing the said relators from such custody pending such determination, and pursuant to the said order, the said relators having duly filed in the office of the Clerk of this Court a bond of the Fidelity & Deposit Company of Maryland, in the sum of One thousand Dollars ($1,000), executed the 3rd day of February, 1922, and duly ap-
126 proved on the 4th day of February, 1922, and the said relators having accordingly been released and admitted,

NOW, after reading and filing the petition of Joshua Lerner, dated and verified as aforesaid, the writ of habeas corpus, dated and issued as aforesaid, the affidavit of John M. Lyons, verified the 26th day of January, 1922, constituting the return of the respondent to said writ, and the affidavit of Solomon Gottlieb, duly verified the 26th day of January, 1922, constituting the traverse to the return to said writ, and the affida-

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vits of Gittel Gottlieb, Solomon Mandel, Siman Schlesinger and Siman Samet, all duly verified the 8th day of February, 1922, constituting the supplemental traverse to the return to said writ,

NOW, after hearing Joseph G. M. Browne, attorney for the relators (Joseph G. M. Browne and Barnett E. Kopelman, of Counsel) in support of said writ, and William Hayward, United States Attorney, Southern District of New York (John Holley Clark, Jr., James C. Thomas, Jr., Assistant United States Attorneys, and John M. Lyons, of
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Counsel) for the respondent, in opposition thereto, and after due deliberation having been had thereon, and upon filing the opinion of the Court, it is, on motion of Joseph G. M. Browne, attorney for the relators

ORDERED AND ADJUDGED that the said writ of habeas corpus be and the same hereby is in all respects sustained; and it is further

ORDERED that the relators be and they hereby are released and discharged from the custody of the respondent, and are hereby admitted into the United States of America; and it is further
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ORDERED AND ADJUDGED that the bond given by the said Fidelity & Deposit Company of Maryland, executed on the 3rd day of February, 1922, in the sum of One thousand Dollars ($1,000), and approved on the 4th day of February, 1922, as aforesaid, be and the same hereby is cancelled and discharged, and the said Fidelity & Deposit Company of Maryland be and it hereby is in all respects and things released and discharged from any and all liability thereon.

JULIAN W. MACK,
Circuit Judge.

130 **Assignment of Errors.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relator-Appellees, against 131 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent-Appellant.	M 7/17.

NOW comes the respondent in the above entitled cause and files the following assignment of
132 errors upon which he will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this Court on the 13th day of March, 1922.

FIRST.—That the United States District Court erred in sustaining the writ of habeas corpus herein.

SECOND.—That said Court erred in holding that the Act of May 19, 1921, properly construed, should include within the exceptions from the

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quota provisions, the wife, and children under sixteen years of age of a minister.

THIRD.—That said Court erred in holding that the Secretary of Labor could not exclude from admission to the United States, the wife, and children under sixteen years of age of a minister, under the Act of May 19, 1921.

FOURTH.—That the Court erred in holding that the Secretary of Labor did not have jurisdiction to order the alien Gittel Gottlieb and her son 134
Israel Gottlieb to be deported to the country whence they came.

FIFTH.—That the Court erred in failing to dismiss the writ of habeas corpus and remanding the relators to the custody of the Commissioner of Immigration at the Port of New York.

WHEREAS, by the law of the land, the said writ of habeas corpus should have been dismissed and the relator-appellee should have been remanded to the custody of the respondent-appellant, the 135
said Robert E. Tod, Commissioner of Immigration at the Port of New York, appellant, by his attorney William Hayward, United States Attorney for the Southern District of New York, prays that for the errors aforesaid and other errors in the record and proceedings, the judgment and decision aforesaid made on the 13th day of March, 1922, may be reversed and for naught held and esteemed, and that the said writ of habeas corpus herein be dismissed and the relator-appellee remanded to the custody of the respondent-appellant, and for such

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other and further relief as may be proper in the premises.

Dated, New York, April 27, 1922.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Appellant,
Office and P. O. Address,
U. S. Courts and P. O. Bldg.,
Borough of Manhattan,
137 City of New York.

Petition for Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,
Relators-Appellees,
138 against
THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,
Respondent-Appellant.

M 7/17.

The petitioner, Robert E. Tod, Commissioner of Immigration at the Port of New York, by his

attorney, William Hayward, United States Attorney for the Southern District of New York, feeling aggrieved by the order and judgment made on the 13th day of March, 1922, by this Court, sustaining the writ of habeas corpus herein, does hereby appeal from the said order and decision of this Court to the United States Circuit Court of Appeals for the Second Circuit, and prays that this appeal may be allowed and that a transcript of the record of proceedings and papers upon which the said order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated, New York, April 27, 1922.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Appellant,
Office and Post Office Address,
U. S. Courts and P. O. Bldg.,
Borough of Manhattan,
City of New York.

142 **Order Allowing Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators-Appellees, against 143 THE COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent-Appellant.	M 7/17.

On reading the petition of Robert E. Tod, Commissioner of Immigration at the Port of New York, made by William Hayward, United States 144 Attorney for the Southern District of New York, his attorney, on his behalf, dated March 13th, 1922, for appeal and consideration of the assignment of errors presented therewith, it is

ORDERED that the appeal herein be allowed as prayed for, and it is

FURTHER ORDERED that a certified transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated, New York, May 13, 1922.

J. W. MACK,
U. S. Circuit Judge.

Citation on Appeal. 145

By the Honorable JULIAN W. MACK, U. S. Circuit Judge.

To Gittel Gottlieb and Israel Gottlieb, Relators.

GREETING

YOU ARE HEREBY CITED and admonished to be and appear before a UNITED STATES CIRCUIT COURT OF APPEALS for the Second Circuit, to be holden at the Borough of Manhattan in the City of New York, in the District and 146
Circuit above named, on the 12th day of June, 1922, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Robert E. Tod, Commissioner of Immigration of the Port of New York, is appellant and you are appellees to show cause, if any they be, why the order and judgment in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

GIVEN UNDER MY HAND at the Bor- 147
ough of Manhattan, in the City of New York, in the District and Circuit above named, this 13th day of May, in the year of our Lord One Thousand Nine Hundred and twenty-two and of the Independence of the United States the One Hundred and forty-sixth.

J. W. MACK,
U. S. Circuit Judge.

148 **Stipulation on Appeal Record.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Relators, vs. 149 THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb, Respondent.	M 7-17.

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a true transcript 150 of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated, June 1, 1922.

J. G. M. BROWNE,
Attorney for Relators.

WM. HAYWARD,
U. S. Attorney,
Attorney for Respondent.

Clerk's Certificate. 151

United States of America,
Southern District of New York, } ss.:

UNITED STATES OF AMERICA, ex rel. GITTEL GOTTLIEB and ISRAEL GOTTLIEB,
Relators,
vs.
THE COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, or other person having charge, custody or control of the bodies of the above named Gittel Gottlieb and Israel Gottlieb,
Respondent.

M 7-17. 152

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties. 153

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 1st day of May, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-sixth.

ALEX. GILCHRIST, JR.,
Clerk.

35516

52 United States Circuit Court of Appeals for the Second Circuit.
No. 72—October Term, 1922.

Argued October 20, 1922. Decided November 17, 1922.

UNITED STATES OF AMERICA, EX REL., Gittel Gottlieb and Israel Gottlieb, relators-appellees,

against

THE COMMISSIONER OF IMMIGRATION OF the port of New York, or other person having charge, custody, or control of the bodies of the above-named Gittel Gottlieb and Israel Gottlieb, respondent-appellant.

Appeal from the District Court of the United States for the Southern District of New York. Before Rogers, Manton, and Mayer, circuit judges.

Joseph G. M. Browne, for relators-appellees; Joseph G. M. Browne, Barnett E. Kopelman, of counsel.

William Hayward, United States attorney, for appellant; James C. Thomas, jr., assistant United States attorney, of counsel.

This is an appeal from an order entered in the United States District Court for the Southern District of New York on March 13, 1922.

53 This appeal is from an order sustaining a writ of habeas corpus and directing that the relators, who had been ordered deported from the United States, and were in the custody of the Commissioner of Immigration at the port of New York pending such deportation, be released and discharged from custody and that they be admitted into the country.

It appears that the relators are natives of Palestine, Jerusalem. The relator Gittel Gottlieb is 28 years of age and the wife of Solomon Gottlieb, a rabbi of a synagogue in the city of New York, who is receiving a salary of two thousand dollars a year. The relator Israel Gottlieb, whose age upon arrival was stated to be four years, is the child of Solomon and Gittel. The husband and father of these relators came to the United States from Palestine about fourteen months before the arrival of his wife and child, and was duly admitted. Prior to the arrival of the relators he had declared his intention to become a citizen. At the time he came to the United States his wife and child did not accompany him because he did not then have money enough to bring them. Later he sent them money to pay their passage, and wrote them to join him here. In the meantime he was contributing money for their support.

Upon the arrival of the relators at the port of New York they were given a hearing before a board of special inquiry, which excluded them on the ground that they came to the United States in violation of the act of May 19, 1921, in that they are natives of a

country whose quota has been filled. The case was then taken to the Department of Labor and the Secretary of Labor affirmed the decision of the board and directed the deportation of the aliens on January 18, 1922.

Thereupon the general secretary of the United Charity Institutions of Jerusalem, which maintains an office in the city of New York, acting for Solomon Gottlieb, the husband of one and the father of the other of the relators, who was confined to his bed by illness, petitioned for a writ of habeas corpus against the Commissioner of Immigration at the port of New York, in whose custody the relators
54 then were. The writ was granted, and after the return and p. hearing thereon the writ was sustained and the relators were ordered discharged on March 3, 1922.

ROGERS, circuit judge (after stating the facts as above):

The question presented by this appeal involves a novel and important question under the immigration exclusion act. If the immigration authorities are right in their understanding of the act, under which the relators have been denied a right to enter the country, a wife and child of a minister, resident in the United States, must be separated from him and returned to the country from whence they came. And the conditions said to prevail in that country as to persons of their particular faith seem to be such as to make their deportation one of unusual hardship.[1]

In deciding the question presented it is necessary to ascertain the intention of Congress as it is found in the immigration acts. For if Congress has declared that aliens situated as these relators are
55 can not enter they must be excluded even if the courts think their exclusion in any particular case would work extreme hardship and even great injustice. It is for Congress and not for the courts to determine what classes of aliens shall enter the United

[1] An affidavit in the record made by one who left Jerusalem on November 9, 1921, is as follows: "Deponent states that with regard to the conditions in Jerusalem, respecting the Jewish population there, that said conditions are such that it is absolutely unsafe for such persons to remain there. Deponent has known of two of the uprisings that have taken place in Jerusalem, and that deponent actually saw several Jews slain by Arabs with knives. That deponent also saw buildings used by the Jews for religious purposes set on fire and destroyed. Deponent also saw many persons of the Hebrew faith lying wounded at the American Zionist Medical Corps Hospital at Jerusalem.

"That robbery of the Jewish residents is frequent, and that women and girls of the Jewish faith have also been attacked and ravished. Deponent states that the conditions there are such that it is absolutely unsafe for persons of said faith to walk upon the streets, and that business there is at a standstill because of the fear of attack. That such attacks are directed only against persons of the Jewish faith.

"That about four or five days after the said uprising deponent left to sail for the United States, and that conditions were so bad and grave that it was necessary to have official protection by way of escorting said persons to the pier where they were about to embark.

"Dependent states that he has been informed that this affidavit has been sought for corroboration of the allegations made by the said relator Gittel Gottlieb as to conditions prevailing in Jerusalem, and deponent therefore makes said affidavit to aid the Court, and without any other interest whatever in the application herein."

States and in what numbers. The duty of the judges, as Lord Bacon said, is jus dicere not jus dare.

The immigration act of February 5, 1917, which is the basic act on this subject, enumerates, in section 3, certain classes of aliens who can not be permitted to enter the United States. The section then goes on to provide that the exclusion clause is not to apply to ministers, nor to their legal wives, nor their children under sixteen years of age who accompany them, or who subsequently may apply for admission to the United States. The provision referred to is as follows:

"The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the
56 United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted class shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this Act."

The act of 1917 has not been repealed. Whether the above provision has been impliedly repealed by the act now to be considered is an important question which must be determined.

The act of May 19, 1921, which is entitled "An act to limit the immigration of aliens into the United States" limits in section 2 the number of aliens of any nationality who may be admitted in any fiscal year to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910.

It is admitted that at the time the relators arrived in this country the number of aliens from Palestine entitled to enter had reached the 3 per centum to which that country was entitled under the above provision for the fiscal year. It was for that reason that these relators were excluded.

But it is also to be had in mind that the act of 1921 provides in section 4: "That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws." And it is claimed that because of section 4 in the act of 1921 there is no repeal of that part of section 3 of the act of 1917, above quoted, which provides that the exclusion clauses do not apply to ministers, nor their wives, nor their children under sixteen years of age who accompany them.

But it becomes necessary to consider certain other provisions in the act of May 19, 1921, which are equally involved herein. This act of 1921 in section 2a provides as follows:

"That the number of aliens of any nationality who may be admitted under the immigration laws of the United States in any fiscal

year shall be limited to 3 per centum of the number of foreign-
57 born persons of such nationality resident in the United States as determined by the United States census of 1910. * * *"

The section then goes on to state that in reckoning the percentage limits certain specified classes of persons shall not be counted.

And section 2d of the act provides as follows:

"When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: * * *"

It then provides that certain specified classes of aliens and among them "ministers of any religious denomination" may be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same fiscal year shall have entered the United States. It makes no mention, however, of the wives or children of such ministers. The failure to mention them in the act of 1921 while they are named in the act of 1917 led to the exclusion of the relators and causes whatever doubt exists as to their right of entry.

In construing these statutes it is of course the duty of the court to endeavor to ascertain the intention and policy of Congress in the enactment of the legislation in question, and then to make practical application of that intention to the facts of this case. The fundamental rule of interpretation is that a statute is to be expounded "according to the intent of them that made it." (4 Inst. 330; Sussex Peerage 11 Cl. & F. 143.)

The act of February 5, 1917, and that of May 19, 1921, are statutes in pari materia and are to be read together as constituting one law. All statutes relating to the same subject being in pari materia are to be construed together as if they formed part of the same statute and were enacted at the same time. (Potter, Dwar. St. 145;
58 Board of Commissioners v. Ætna Life Ins. Co., 90 Fed. 222, 227.) The two acts are in pari materia and must be read together, and as was said in United States v. Munday (22 U. S. 175, 184), "no part of the previously existing law upon the same subject is to be regarded as inoperative unless no other construction of the later legislation is reasonable."

It is not to be lost sight of that it is one of the cardinal rules of construction that effect is to be given, if possible, to every word, clause, and sentence of the statute. (United States v. Ninety-nine Diamonds, 139 Fed. 961.)

In Maxwell on the Interpretation of Statutes (fifth ed., 325) the rule is correctly stated as follows:

"Whenever the language of the legislature admits of two constructions, and if construed in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words."

The rule thus stated is supported by many cases decided in the English courts which are cited by the writer of the treatise above quoted.

There are numerous instances in which the courts of this country, Federal and State, have applied the rule in the construction of doubtful statutes.

A construction of a statute which would lead to an absurd result is to be avoided if possible. Thus in United States v. Mrs. Gue Lim (176 U. S. 459) it was held that the wife of a Chinese merchant entitled by treaty to come into this country and dwell here was entitled to enter also and that she could not be required to furnish the certificate required by the statute from Chinese persons other than laborers "as such construction of the statute would lead to absurd results," and it was held that the act was never intended to exclude the wife and minor children of a merchant lawfully entitled to enter.

In cases where the proper construction of a statute is doubtful, arguments from the absurdity or injustice of a proposed construction may properly be considered. The Supreme Court has
59 frequently recognized the rule that where a particular construction of a statute will occasion great inconvenience or produce injustice that view is to be avoided if another and more reasonable interpretation is present in the statute. (Knowlton v. Moore, 178 U. S. 41, 77; Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 37; Blake v. National Banks, 23 Wall. 307, 320; Wilson v. Rousseau, 4 How. 646, 680; Bloomer v. McQuewan, 14 How. 539, 553.) And in Lau Ow Bew v. United States (144 U. S. 47, 59) Chief Justice Fuller, speaking for the court, said:

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and if possible, so as to avoid an unjust or an absurd conclusion."

In the well-known case of Church of the Holy Trinity v. United States (143 U. S. 457) the Supreme Court construed the act of February 26, 1885, which in terms prohibited the importation and migration of aliens "under contract or agreement to perform labor" in the United States. Trinity Church in the city of New York had made a contract with an alien minister residing in England by which he was to remove to New York and enter into its service as rector. It was claimed that this came within the terms of the statute and the court below so held (36 Fed. 303). The Supreme Court, however, reversed the judgment below. It held that although the case came within the letter of the statute, it was not within the intention of the Congress and therefore could not be within the statute. The court, speaking through Justice Brewer, said:

"It is a familar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legisla-

tor, for frequently words of general meaning are used in a
60 statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

The court in the above case went much further than we are called upon to go in the instant case, which we regard as within both the letter and spirit of the statute construing both acts as one.

Keeping in mind the above rules of interpretation, we construe the acts of 1917 and 1921 as one statute, the second act being, as provided therein, an addition to and not a substitute for the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted. Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it can not be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted, we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed act of 1917 has been withdrawn.

The order sustaining the writ of habeas corpus and ordering the release and discharge of the relators Gittel Gottlieb and Israel Gottlieb from the custody of the respondent is affirmed.

61 At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court rooms in the Post Office Building in the city of New York, on the 24th day of November, one thousand nine hundred and twenty-two.

Present: Hon. Henry Wade Rogers, Hon. Martin T. Manton, Hon. Julius M. Mayer, circuit judges.

UNITED STATES, EX REL. GITTEL GOTTLIEB AND ISRAEL Gottlieb, relators-appellees,
v.
COMMISSIONER OF IMMIGRATION, ETC., RESPONDENT-appellant.

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

M. T. M.
J. M. M.

62 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. U. S., ex rel. Gottlieb, v. Commissioner of Immigration, etc. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 23, 1922. William Parkin, clerk.

63 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 62, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of United States, ex rel. Gittel Gottlieb and Israel Gottlieb, relators-appellees, against Commissioner of Immigration, etc., respondent-appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 26th day of January, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of the said United States the one hundred and forty-seventh.

[SEAL.] WM. PARKIN, *Clerk.*

64 *Writ of certiorari and return filed March 24, 1923.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:*

Being informed that there is now pending before you a suit in which the Commissioner of Immigration of the port of New York, etc., is appellant, and the United States of America, ex rel. Gittel Gottlieb and Israel Gottlieb, are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of

New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the
65 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-three.

WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

66 [File indorsement omitted.]

67 In the Supreme Court of the United States. October term, 1922.

COMMISSIONER OF IMMIGRATION OF THE PORT OF New York, petitioner,
v.
GITTEL GOTTLIEB ET AL., RESPONDENTS.
No. 855.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
J. G. M. BROWNE,
Counsel for Respondents.

MARCH 15, 1923.

68 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, March 21, 1923.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

69 [File indorsement of Circuit Court omitted.]

71 [File indorsement of Supreme Court omitted.]

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In the Supreme Court of the United States

OCTOBER TERM, 1922.

COMMISSIONER OF IMMIGRATION OF PORT of New York, petitioner,
v.
GITTEL AND ISRAEL GOTTLIEB. } No. —.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Comes now the Solicitor General of the United States and on behalf of petitioner prays the court to grant a writ of certiorari to review the judgment of the United States Circuit Court of Appeals entered in the above-entitled cause.

QUESTION INVOLVED.

The question presented is whether the so-called Quota Act of May 19, 1921 (42 Stat., chap. 8, p. 5), forbids, after the quota is exhausted, the entry into the United States of the wife and minor child of a resident alien, to wit, a minister of the Gospel, who has declared his intention to become a citizen of the United States. The trial court and the Circuit Court of Appeals have answered the question in the negative and ordered the discharge of the aliens.

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STATUTES INVOLVED.

The pertinent parts of the so-called Quota Act of May 19, 1921 (42 Stat. 5), are contained in Sections 2 and 4 thereof, and read as follows:

> SEC. 2 (a) That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910. This provision shall not apply to the following, and they shall not be counted in reckoning any of the percentage limits provided in this Act: (1) Government officials, their families, attendants, servants, and employees; (2) aliens in continuous transit through the United States; (3) aliens lawfully admitted to the United States who later go in transit from one part of the United States to another through foreign contiguous territory; (4) aliens visiting the United States as tourists or temporarily for business or pleasure; (5) aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration; (6) aliens from the so-called Asiatic barred zone, as described in section 3 of the Immigration Act; (7) aliens who have resided continuously for at least one year immediately preceding the time of their admission to the United States in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, countries of Central or

South America, or adjacent islands; or (8) aliens under the age of eighteen who are children of citizens of the United States.

* * * * *

(d) When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: *Provided,* That the number of aliens of any nationality who may be admitted in any month shall not exceed 20 per centum of the total number of aliens of such nationality who are admissible in that fiscal year: *Provided further,* That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this proviso who enter the United States before such maximum number shall have entered shall (unless excluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act: *Provided further,* That in the enforcement of this Act preference shall be given so far

> as possible to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancees, (1) of citizens of the United States, (2) of aliens now in the United States who have applied for citizenship in the manner provided by law, or (3) of persons eligible to United States citizenship who served in the military or naval forces of the United States at any time between April 6, 1917, and November 11, 1918, both dates inclusive, and have been separated from such forces under honorable conditions.
>
> * * * * *
>
> SEC. 4. That the provisions of this Act are in addition to and not in substitution for the provisions of the Immigration laws.

The Circuit Court of Appeals bases its opinion largely upon the closing portion of Section 3 of the Immigration Act of February 5, 1917 (39 Stat. 874, 876), and while we believe it can be demonstrated that said statute has no place in the solution of the question presented, it is nevertheless deemed advisable to set it forth at this point. The provision reads as follows:

> The provision next foregoing, however, shall not apply to persons of the following status or occupation: Government officers, ministers, or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany

them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this act.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Circuit Court of Appeals in this case materially affects the administration of the so-called Quota Act, in that a principle of construction is announced which will open the door to the entry of many aliens who are able to establish a right of entry under the earlier immigration laws, although their entry when tested solely by the Quota Act is forbidden.

2. The decision of the Circuit Court of Appeals is demonstrably in error, and does not represent a possible construction of the law which should be acquiesced in because it maintains the unity of the family.

ARGUMENT.

The Circuit Court of Appeals, in its opinion, asserts (1) that the Quota Act, in Section 4, provides that such Act is "in addition to and not in substitution for the provisions of the immigration laws"; (2) that Section 3 of the Immigration Act of 1917, *supra*, specifically permitted the entry into the country,

among others, of *ministers*, "*their* legal wives, or their children under sixteen years of age"; and (3) therefore construing the two provisions as being in *pari materia*, the omission from the Quota Act of wives and children of exempt aliens can not be construed to take away the right which, the court contends, such wives and children possessed under Section 3 of the Immigration Act. The court appears to have adopted this reasoning because of what is conceived to be the legislative intent not to separate families.

The error in the court's ruling may be shown by the following propositions:

1. The very structure of Section 3 of the Immigration Act, *supra*, compels the conclusion that the right to enter therein conferred upon the wives and children of ministers was incorporated into the section as an exception only to the previous provision therein relating to the exclusion of aliens coming from certain defined geographical limits. The aliens here involved do not come from that zone, and therefore do not fall within the exception here dealt with.

2. Conceding, *arguendo*, that the court below correctly interpreted the exception contained in Section 3 as covering aliens from whatsoever country they might come, its ruling is still open to attack, for when the fundamental nature of immigration laws is borne in mind the right of an alien to enter, where that right is specifically granted by statute, stands upon no higher plane than the right of an

alien to enter where such right exists because no provision of law can be found denying admission. This being so, and there is no escape from its correctness, then the principle announced by the court below would, if adhered to, work a substantial destruction of the Quota Act, which, by its very terms, reveals its purpose to absolutely close the doors to the admission of all aliens after the maximum percentages are reached, except those specifically mentioned in said Quota Act. Otherwise, if the rule announced by the court below be sound, it was not necessary for the aliens here involved to place their finger upon some specific provision of the immigration laws permitting their entry, but the burden rather rested upon the Government to point out some specific provision of said laws denying their entry. This, of course, the Government could not do, because, as hereinbefore indicated, immigration laws are fundamentally exclusion laws, and all aliens may enter who are not by the clear terms of such laws denied admission. To illustrate, the Quota Act exempts, among others, attendants and servants of foreign representatives, and also "aliens employed as domestic servants." The Quota Act specially exempts families of foreign representatives. Is it reasonable to suppose that it was intended by implication to extend the same privilege of entry to the families of the menials just mentioned? If the rule of the court below be adopted, such rule must embrace such families, for

there is no provision of the immigration laws excluding them.

3. The further contention of the Court of Appeals that as the Immigration Act specifically permitted the entry of ministers, and their wives and minor children, such right was not intended by Congress to be taken away by the Quota Act which in exempting ministers failed to specifically mention their wives and children, overlooks the fact that an analysis of the Quota Act discloses that the omission was not inadvertent, but intentional, e. g., observe that in the closing portion of Section 2 provision is made that where more aliens apply at one time than can be permitted to enter because the maximum percentage would thereby be exceeded, a mere preference right of entry is accorded to such of them as happen to be wives, children, and others of specified aliens. The aliens here involved fall definitely within this mere preference provision of the Quota Act (see clause "2" of paragraph "d," section 2 of said Act, *supra*), and not within the specified classes who are granted absolute right of entry by Section 2, paragraph "a" of the Act without regard to the percentage limits.

4. The provision in Section 4 of the Quota Act declaring that said Act is "in addition to and not in substitution for the provisions of the immigration laws," was undoubtedly introduced to preclude the Quota Act from being interpreted as embracing the sole test of entry, i. e., after an alien was able to

overcome the terms of the Quota Act, either by bringing himself within its express exempting or percentage provisions, said alien must still satisfy the requirements of the Immigration Act as a condition to gaining entry. The ruling of the court below reverses the order of the statutes, and because it finds what it regards as a right of entry under the immigration laws, it therefore concludes that in order to preserve such right it is justified in reading into the Quota Act words which the structure of the Act discloses Congress intentionally omitted. The true relationship between the Immigration Act and the Quota Act is not dissimilar in principle to that existing between the Immigration Act and the Chinese Exclusion laws, as pointed out by this court in *United States* v. *Wong You*, 223 U. S. 67, 70. In that case it was said:

> To allow the immigration act its literal effect does not repeal, alter, or amend the laws relating to the Chinese, as it is provided that it shall not, in § 43.

So here to allow the Quota Act its literal effect would not cause it to repeal or alter the Immigration Act.

If it seems desirable that cases like those here involved should be exempted from the excluding provisions of the Quota Act, such *casus omissus* can be supplied only by legislative action. This court has not, in the past, hesitated to so construe the immigration statutes as to work hardships in the

family relationship where it reached the conclusion that the plain terms of the statute required such construction. *Zartarian* v. *Billings*, 204 U. S. 170; *Yee Won* v. *White*, 256 U. S. 399.

JAMES M. BECK,
Solicitor General.
JOHN W. H. CRIM,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

FEBRUARY, 1923.

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

COMMISSIONER OF IMMIGRATION OF PORT New York, petitioner, v. GITTEL GOTTLIEB AND ISRAEL GOTTLIEB. } No. 221.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER.

STATEMENT.

This case comes before the court upon a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, to review a judgment of that court affirming a judgment of the District Court for the Southern District of New York, which sustained a writ of habeas corpus and directed the discharge from custody of certain aliens applying for admission to the United States.

The aliens, Gittel Gottlieb, age 24, and Israel Gottlieb, age 4, who are natives of Palestine, arrived at the port of New York on December 27, 1921.

(R. 13.) They had come to join Solomon Gottlieb, their husband and father, respectively, who had resided in New York City for approximately fourteen months prior thereto, was engaged as Rabbi of a Jewish congregation, and had declared his intention to become a citizen of the United States. (R. 17–18.)

On December 30, 1921, the aliens were duly accorded a hearing before a Board of Special Inquiry (R. 14–19), which, after hearing the testimony, excluded them upon the ground that they had come to the United States in violation of the "Quota Law" of May 19, 1921, 42 Stat. 5, c. 8, in that they were natives of a country whose quota had been filled (R. 18–19).

An appeal was taken to the Secretary of Labor, who, on January 18, 1922, affirmed the decision of the Board and directed the deportation of the aliens. (R. 19.) A petition for a writ of habeas corpus was immediately presented to the United States District Court for the Southern District of New York, and the writ awarded. (R. 1–8.) Return was made (R. 9–19), and subsequently the relators filed a traverse (R. 20–24) and a supplemental traverse (R. 25–37). The case came on for hearing before Hon. Julian W. Mack, United States Circuit Judge, who sustained the writ and entered an order (March 13, 1922) releasing and discharging the relators from the custody of the immigration officers, and directing that they be admitted to the United States. (R. 38–43.) (278 Fed. 564.)

Thereafter, on May 13, 1922, an appeal was taken by the Commissioner of Immigration of the Port of New York to the Circuit Court of Appeals for the Second Circuit (R. 46–51), which court on November 24, 1922, affirmed the decree and order of the District Court (R. 53–59). (285 Fed. 295.)

Thereafter, on March 24, 1923, upon petition duly presented to this court, a writ of certiorari was granted to review the judgment of the Circuit Court of Appeals. (R. 59–60.) The single question involved is one of construction, and arises out of the pleadings filed in the District Court.

STATEMENT OF THE QUESTION INVOLVED.

The second assignment of error filed in the Circuit Court of Appeals (R. 44–45) was as follows:

> Second. That said Court erred in holding that the Act of May 19, 1921, properly construed, should include within the exceptions from the quota provisions, the wife, and children under sixteen years of age, of a minister.

The failure of the Circuit Court of Appeals to sustain this assignment raises the only question to be considered by this court.

This appeal presents a case of hardship that naturally excites our sympathy. We would gladly resolve the doubt in favor of the immigrants, if any doubt existed. We must not permit a hard case to make bad law by a perversion of the laws of Congress. We would gladly concur in the opinion of the courts

below, if the law were not, as we believe, too clear, and the consequences of the decision too serious in the practical administration of the immigration statutes to permit us to acquiesce. While legislative policy is not for the Executive Department of the Government, we venture the opinion that there should be such elasticity in the practical administration of the law as would permit the Commissioner of Immigration to make an exception in isolated cases, where the enforcement of the law requires the separation of a family, a result which seems to us abhorent.

ARGUMENT.

I.

The acts of Congress involved.

This appeal raises a novel and important question of construction under the "Quota Law" of May 19, 1921, c. 8, 42 Stat. 5, as amended by Public Resolution No. 55, approved May 11, 1922, c. 187, 42 Stat. 540.

Section 2 (d) of this Act contains a proviso which excepts out of its provisions ministers of religion, without specifically mentioning their wives, and children under sixteen years. The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, contains in its third section a proviso which excepts from certain of its provisions ministers of religion, and specifically extends the exception "to their legal wives or their children under sixteen years of age, who shall accompany them, or who subsequently may apply for admission to the United States." (39 Stat. 877.)

The District Court and the Circuit Court of Appeals held that the Acts of 1917 and 1921 were in *pari materia,* that the specific exception contained in Section 3 of the earlier act was indicative of an intention, and declaratory of a policy, of Congress to admit generally the wives and children of admissible, aliens, and that in order to carry out the legislative intent and purpose it is necessary to read into the Act of 1921 a like exception.

We believe, and we shall endeavor to demonstrate hereafter, that the Act of 1917 in no way affects the Act of 1921, and is in no way involved in the instant case. However, as the reasoning of the courts below starts with it as a premise, and involves, as we believe, an erroneous construction of both acts, it is necessary to examine in some detail the pertinent provisions of both acts *in limine.* For the convenience of the court Section 3 of the Act of 1917 and the entire Act of 1921 are printed as an appendix to this brief.

Act of 1917.

The Act of February 5, 1917, c. 29, 39 Stat. 874, is a comprehensive enactment "To regulate the immigration of aliens to, and residence of aliens in, the United States." It repealed and replaced a number of earlier acts, and was obviously designed to furnish a basic act covering the entire field not already occupied by existing treaties and the laws relating to exclusion of Chinese. (See Section 38.)

Section 3 defines the classes of aliens who are to be excluded. After enumerating idiots, imbeciles, feeble-

minded persons, epileptics, insane persons, paupers, professional beggars, persons afflicted with contagious diseases, criminals, polygamists, anarchists, prostitutes, contract laborers, and others considered undesirable, there is a description by parallels of latitude and meridians of longitude, of a geographical zone which includes a large part of Asia and the South Sea Islands. This zone is commonly referred to as the "Asiatic barred zone." With respect to this zone it is provided that "unless otherwise provided for by existing treaties, persons who are natives of * * *" this zone, shall be excluded. And in order that this clause should not be construed so as to set aside any of the Chinese exclusion acts, it is said "and no alien *now* in any way excluded from, or prevented from entering, the United States shall be admitted to the United States." [Italics ours.] Immediately following these provisions relating to the "Asiatic barred zone" is this proviso, upon which the courts below so strongly relied in their opinions:

> The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occu-

> pation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in Section nineteen of this Act.

This was construed by the Circuit Court of Appeals as a general exception applicable to the entire section. It is obvious, however, that this proviso relates solely to the "Asiatic barred zone." The language is clear. It does not say "this *section*, however, shall not apply to persons of the following status or occupations." It says "*the provision next foregoing*, however, shall not apply, etc." The rule stated in *United States* v. *Bernays*, 158 Fed. 792, is applicable:

> A proviso should be construed with reference to the subject matter of the sentence of which it forms a part, unless it clearly appears to be designed by the legislature for a broader or more independent operation.

Here the grammatical construction requires that it be limited to the "provision next foregoing."

Furthermore, if it be construed as a general exception out of all the classes enumerated in the section, it would operate to admit to this country travelers for curiosity, artists, or students, notwithstanding the fact that they might also be anarchists, polygamists, criminals, or epileptics. The language requires no such construction and certainly such an intention is not to be imputed to Congress.

We think it clear, therefore, that the above-quoted proviso must be construed so as to relate only to the "Asiatic barred zone."

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Act of 1921.

We come now to the Quota Law of 1921 (May 19, 1921, c. 8, 42 Stat. 5, as amended by Public Resolution of May 11, 1922, c. 187, 42 Stat. 540). As its title indicates, this is an act to *limit* rather than to *regulate* the immigration of aliens. It provides in Section 2 (a):

> That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910.

Then follows an enumeration of certain classes which "shall not be counted in reckoning any of the percentage limits provided in this Act." These classes are entirely removed from the operation of the law. Among them are "(6) aliens from the so-called Asiatic barred zone, as described in Section 3 of the Immigration Act."

In a later paragraph of the same section (paragraph (d)) it is provided that, "when the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted, all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year, shall be excluded."

These provisions disclose the wide difference in purpose and character between this Act and that of

1917. Both relate to the same subject—immigration. They are in *pari materia;* they must be read and construed together, but each has its separate and distinct purpose. The provisions of the later act do not repeal or set aside those of the earlier one, nor does the earlier modify the clear language or alter the manifest purpose of the later.

The Immigration Law (1917) defines and excludes undesirable aliens because they are undesirable, but it leaves our ports open to all others without regard to their number. The Quota Law (1921), as a supplement to it, limits the number of aliens of each nationality, and when this "quota" has been admitted it excludes *all others.* The Immigration Law *regulates* immigration by a process of selection. The Quota Law *limits* it. The former is like a great net cast across the stream of foreign immigration to catch and exclude all the scum and rubbish which may be borne upon its waters, while the latter is like a floodgate which shuts off the stream entirely when a certain measured quantity of water has passed.

A further difference between these enactments should be noted. Exclusion under the Act of 1917 is permanent, unless the disqualification be removed, which in most cases is impossible; while exclusion under the Act of 1921 is merely temporary. The Act, in its present form, is limited to expire on June 30, 1924, after which all aliens otherwise admissible may enter. Meanwhile anyone who has been so unfortunate as to arrive after the quota is filled need only wait until the next fiscal year, when, by applying in

the early part of that year, he may make sure of admission.

Section 4 of the Act of 1921 provides:

> That the provisions of this Act are in addition to, and not in substitution for, the provisions of the Immigration laws.

Had there been no specific provision this would have been obvious from the general character and purpose of the two acts. There is no conflict or inconsistency between them. And certainly no question arises such as is suggested in the opinion of the Circuit Court of Appeals (R. 55) as to the repeal of any of the provisions of the earlier act by those of the later.

We come now to a consideration of the exception of ministers from the Quota Law. It is contained in Section 2 (d) and is as follows:

> *Provided further*, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, *ministers of any religious denomination*, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality, admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this proviso who enter the United States before such a maximum number shall have entered shall (unless ex-

> cluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act. (*Italics ours*).

Thus, ministers are excepted, but the Act makes no exception of their wives or children. It is this proviso into which the courts below have read an exception allowing the wives and children of ministers to enter.

We shall have occasion hereafter to consider this portion of the statute more carefully. We now call attention only to the fact that the individuals enumerated in it are not excepted entirely out of the provisions of the Act, as are those mentioned in Section 2 (a). If they arrive before the quota is filled, they shall be counted. The exception does not seem, therefore, to have been inserted because these persons were considered particularly desirable, but merely to avoid undue inconvenience to persons pursuing certain particular occupations, whose contracts or engagements might occasion their entry at a time when the quota was exhausted. The same reason which prompted their exception would not extend to their wives or children.

II.

The opinion of the Circuit Court of Appeals.

In the light of this preliminary view of the statutory provisions let us examine the decision of the court below. The reasoning of the Circuit Court of

Appeals in support of its conclusion is summarized in the following portion of the opinion (R. 58):

> Keeping in mind the above rules of interpretation, we construe the Acts of 1917 and 1921 as one statute, the second act being, as provided therein, an addition to and not a substitution for, the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted. Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it can not be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted, we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed Act of 1917 has been withdrawn.

Thus, the court declares that an exception which is not contained in the Act of 1921 must be read into it, (1) because the relators had a right of entry into the United States under the former act; (2) because the supposed legislative intent and policy declared by Congress in the former act, to avoid the separation of families, requires such construction; and (3) because the construction adopted by the immigration officers would lead to results which are unjust, unreasonable, and absurd.

We think that each of these reasons is demonstrably unsound, and in reply we submit that—

1. The exception of wives and children out of a particular class of aliens excluded by the Act of 1917 does not give them a right of entry superior to that of any other admissible alien.

2. The immigration laws of Congress disclose no general policy to except from their provisions wives and children.

3. The language of the Act of 1921 is clear and should be enforced as Congress intended.

III.

The exception of wives and children out of a particular class of aliens excluded by the Act of 1917 does not give them a right of entry superior to that of any other admissible alien.

We have already pointed out that the exception of wives and children, which is contained in Section 3 of the Act of 1917, relates only to the Asiatic barred zone, and that aliens from that zone are removed

entirely from the provisions of the Quota Law by Section 2 (a), (6) thereof. We might further observe that the relators in the instant case do not come from that zone, and accordingly can not hope to derive a benefit from that exception.

If, however, we join the Circuit Court of Appeals in hurdling these obstacles, we come to the rather curious position which that court took concerning the rights of wives and children. At several places the court refers in its opinion (R. 58) to "those to whom a right of entry was expressly given" in the Act of 1917. The theory is that because wives and children of certain aliens were excepted out of the excluded class mentioned in the Act of 1917, they thereby acquired some vested right to enter the United States, which could not thereafter be taken from them excepting by some express and unequivocal declaration by Congress. That there is no such right of entry seems clear.

The Act of 1917 is an exclusion act. It defines those classes of persons who shall not enter. Because of the generality of the terms used in describing the excluded classes, it became necessary to except certain persons out of those who otherwise would be excluded. Manifestly such excepted persons are on a parity with that very large class of admissible aliens who did not fall within the excluded classes. An alien who may be admissible because he comes within the exception surely has no greater claim upon our national hospitality than one who never came

within the excluded classes. None of them have a "right of entry." They are merely persons *not excluded*. And when the provisions of the Quota Law are applied, as they must be, to all of these admissible aliens, there is no reason why one of them rather than another should be admitted in violation of the plain letter of that enactment.

IV.

The immigration laws of Congress disclose no general policy to except from their provisions wives and children.

The Circuit Court of Appeals was of the opinion that Congress had adopted a general policy of admitting the wives and children of admissible aliens in order to preserve the unity of the family and avoid the hardship consequent upon a separation of its members. We have examined carefully the various immigration acts and we find no such settled policy. There are specific instances (see Secs. 3 and 22 of Act of Feb. 5, 1917, c. 29, 39 Stat. 874, and Sec. 2 (d) of Act of May 19, 1921, c. 8, 42 Stat. 5) in which they are specially mentioned. These serve, however, only to negative the idea of a general policy embracing all cases.

The court below was aided in its search for such a benevolent policy by a contemplation of the hardships which might otherwise be visited upon women and children by the operation of our laws. We submit, however, that it is fundamentally erroneous to speak

of our immigration statutes as requiring in any case the separation of members of the same family. The idea is based upon the assumption that some one or more members of the family are obliged to enter the country. Of course, this is not the fact. The law imposes no obligation upon any alien to enter. If he arrive at a port of the United States with his family, and it be found that one or more members of his family are not admissible under our laws, he is not obliged to remain. Any separation of his family which may result in such circumstances follows from his own act and not from the operation of our laws. The same is true of the alien who, as in the instant case, separates himself from his family first, establishes a residence here, and then sends for his family. We would not for a moment discount the misfortune which is occasioned by such circumstances, but we do submit that it is not a misfortune of our making, nor is it one which Congress was under any obligation to avoid or has adopted any general policy to prevent.

There are undoubtedly many cases where fathers, or mothers, or brothers, or sisters, or children may be entitled to admission under the Act of 1917, but other members of the family would not be because of physical or mental defects, criminal tendencies, or political theories. *Zartarian* v. *Billings*, 204 U. S. 170. There is no policy to be found in that Act, or in any other which has come to our notice, which requires the admission of an entire family because the head of the family is admissible.

The humanitarian considerations here relied upon have been urged in other cases, but this court, however desirous it may have been to avoid it, has not hesitated to construe the immigration statutes so as to exclude the wives or children of admissible aliens when it reached the conclusion that the plain terms of the statute required such construction.

Zartarian v. *Billings*, 204 U. S. 170.
Low Wah Suey v. *Backus*, 225 U. S. 460.
Yee Won v. *White*, 256 U. S. 399.

V.

The language of the Act of 1921 is clear and should be enforced as Congress intended.

The first sentence of Section 2 (d) of the Act of 1921 (42 Stat. 5) is clear:

> When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded.

Together with the quota provision (Sec. 2 (a)), it fixes a definite and certain limit to the number of aliens who may be admitted in any fiscal year. This is in accord with the manifest purpose of the Act, which was to stem the rising tide of European immigration by fixing a numerical limit which should not be exceeded under any circumstances, unless the

applicant for admission could bring himself clearly within the exceptions.

In support of its construction the Circuit Court of Appeals relies upon the familiar case of *Holy Trinity Church* v. *United States*, 143 U. S. 457. But the distinction between that and the instant case is clear. There the court had before it a statute which forbade the entry of aliens "under contract or agreement to perform labor" in the United States. From an examination of the evils which Congress sought by that act to remedy, this court found that the contract of a minister of religion to render services to a church congregation was not within the spirit or purpose of the act; and, construing the letter of the law to conform to its purpose, it held that the broad language of the act might be cut down so as to embrace only those cases which fell within that purpose.

In the instant case we have a statute whose purpose is to limit the number of aliens entering the country. The admission of any alien, not clearly entitled to enter, tends to defeat this purpose.

Where the letter of the law extends beyond its spirit and purpose, it may be construed so as to embrace only cases within the purpose. But where the letter coincides with the purpose it is not open to any construction which will defeat that purpose.

The case of *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, is also relied upon. A careful reading of that opinion and of the Chinese treaty of 1880, however, will disclose that it has no application to this case. That decision was twice urged upon this court to

support contentions similar to those made here, but in each case the court pointed out clearly the distinction. *Yee Won* v. *White*, 256 U. S. 399; *Low Wah Suey* v. *Backus*, 225 U. S. 460.

But there is a further reason why the language which excepts ministers only should not be extended to embrace their wives and children. The Act bears upon its face clear indications of the fact that Congress carefully considered the generality of the language employed and made such exceptions therefrom as it deemed proper. Section 2 (a) contains eight separate exemptions, each of which is carefully and accurately phrased. The first sentence of Section 2 (d) contains, out of an abundance of caution, the words "except as otherwise provided in this act." Thereafter follow certain other exceptions, and the conclusion of that paragraph contains the following proviso (42 Stat. 6):

> *Provided further*, That in the enforcement of this Act preference shall be given so far as possible to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancees, * * * (2) of aliens now in the United States who have applied for citizenship in the manner provided by law * * *.

This fits precisely the case of the relators. It indicates that Congress specially considered such wives and children and made such provision for them as in its judgment was proper. Surely in the light of this proviso there is no room for the argument that Con-

gress intended that these relators should be excepted entirely out of the provisions of the law.

> Where the Congress makes no exception from the clear and certain declaration of a statute, there is ordinarily a presumption that it intended to make none. (*McIver* v. *Ragan*, 2 Wheat. 25, 29; *Bank* v. *Dalton*, 9 How. 522, 528; *Vance* v. *Vance*, 108 U. S. 514, 521; *Railway Co.* v. *B'Shears*, 59 Ark. 237, 244.) By so much the more it is true that where the law making body has made exceptions to the general terms of an act, as in this instance, the presumption is that it intended to make no more. (*United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321, 332.)

In *Lapina* v. *Williams*, 232 U. S. 78, 92, it is said:

> The Section contains its own specific provisos and limitations, and these, on familiar principles, strongly tend to negative any other and implied exception.

And this is particularly true in the case at bar, where, as we have already observed, there is a good reason why actors, professors, musicians, ministers, etc., should be excepted from this temporary exclusion, and the same reason does not extend to their wives and children.

Finally, it is urged that the letter of the law is harsh and unreasonable, and its enforcement will lead to unjust and absurd results. If the exclusion of those who arrive after a quota is filled were a permanent bar to their entry, there would be considerable force to this argument. But it is not. The enforce-

ment of the Act results merely in delay and inconvenience. We may well say with this court in *St. Louis and Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295:

> This argument is a dangerous one, and never should be heeded when the hardship would be occasional and exceptional. It would be better, it was once said by Lord Eldon, to look hardship in the face rather than break down the rules of law.

The courts are not at liberty to substitute for the will of the legislature their own ideas of the justice, policy, or expediency of the law.

> No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. (*United States* v. *Goldenberg*, 168 U. S. 95, 103.)
>
> The purpose of the law is the ever-insistent consideration in its interpretation. (*United States* v. *Antikamnia Company*, 231 U. S. 654, 667.)

To the same effect are *United States* v. *First National Bank*, 234 U. S. 245; *American R. R. Co.* v. *Birch*, 224 U. S. 547; and many other cases.

But whatever may be the results of the enforcement of the letter of the law, the consequences of the construction adopted by the Circuit Court of Appeals are still more unreasonable and absurd, for they would make of the Quota Law a mere scrap of paper. Let us follow them.

If the exception be extended to include the wives and children of ministers of religion, it must, by the same reasoning, be extended to the husbands, wives, and children of actors, artists, lecturers, singers, nurses, professors, and domestic servants, for all of these are included in the language of the act and are on a parity with ministers. But it would not stop here. The wives and children of all aliens admitted before the Quota Law became effective, and who returned for a temporary visit abroad, would have to be admitted. In fact, this same Circuit Court of Appeals has decided in a later case that this conclusion must logically follow from the decision here. In *United States ex rel. Markarian* v. *Tod*, 290 Fed. 198, it was held that an Armenian who came to this country in 1913, declared his intention of becoming a citizen and returned in 1921 for the purpose of being married might bring back with him his Turkish wife, notwithstanding the fact that the quota of her nationals had been filled. The court said (p. 199):

> The same reasoning which in the Gottlieb case permitted the entrance of the extra quota wives of ministers gives admission to the extra quota wives of aliens returning from a temporary visit abroad.

But it would not stop even at this absurd length. The reasoning of the Circuit Court of Appeals would require the admission of the wives and children of all aliens who had entered before the Quota Law was enacted as well as *of all those who enter under the*

Quota Law. It is easy to see how a quota which is limited by the Act to 3 per cent might be doubled, tripled, quadrupled, or even further enlarged under such a construction. If the heads of families do but come first and fill the quota, and thereafter send for their wives and children, we shall have to admit not 3 per cent but 10, 15, or 20 per cent. Thus, the construction adopted by the court below would utterly defeat the purpose of Congress and convert the Quota Law from an act to limit immigration to so much legislative nonsense.

CONCLUSION.

This brief has extended to somewhat greater length than would ordinarily be justified in the discussion of a case of this character. The unfortunate circumstances of the relators, however, compel our interest and warrant a thorough and careful examination of the question. And, on the other hand, the consequences which must logically follow from the reasoning of the court below would be fatal to the purpose of the Quota Law.

It seems to us abundantly clear (1) that the Immigration Act of 1917 does not in any way limit or modify the terms of the Quota Law of 1921; (2) that wives and children of ministers did not acquire, by virtue of the proviso in the former act, any right of entry into the United States superior to that of any other admissible alien; (3) that while Congress has frequently extended special provisions in favor of wives, children, and other relatives, it

has never adopted any settled policy to admit them, nor has it provided for their admission when to do so would defeat the purpose of the statutes; and (4) that there is no possible construction of the Quota Law which will admit the relators without at the same time defeating the clear purpose of the Act and rendering its provisions worthless and ineffective as a check to the increasing flood of foreign immigration. We reluctantly reach the conclusion that the decision of the Circuit Court of Appeals was in error and should be reversed.

Respectfully submitted.

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NOVEMBER, 1923.

APPENDIX.

Section 3 of the Immigration Act.

[Act of February 7, 1917, c. 29, 39 Stat. 874, entitled "An Act To regulate the immigration of aliens to, and residence of aliens in, the United States."]

SEC. 3. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the

unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for

admission; persons whose tickets or passage is paid for with the money of another, or who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next

foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this act.

That after three months from the passage of this act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary

of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years, and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: *Provided*, That nothing in this act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: *Provided further*, That the provisions of this act, relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage

of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *Provided further*, That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: *Provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: *Provided further*, That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone: *Provided further*, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive

years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe: *Provided further*, That nothing in the contract-labor or reading-test provisions of this act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: *Provided further*, That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: *Provided further*, That nothing in this act shall be construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests.

THE QUOTA LAW.

[Act of May 19, 1921, c. 8, 42 Stat. 5, as amended May 11, 1922, c. 187, 42 Stat. 540, entitled "An Act to limit the immigration of aliens into the United States."]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the operation of the Act entitled "An Act to limit the immigration of aliens into the United States," approved May 19, 1921, is extended to and including June 30, 1924.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act—

The term "United States" means the United States, and any waters, territory, or other place subject to the jurisdiction thereof except the Canal Zone and the Philippine Islands; but if any alien leaves the Canal Zone or any insular possession of the United States and attempts to enter any other place under the jurisdiction of the United States nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.

The word "alien" includes any person not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed nor citizens of the Islands under the jurisdiction of the United States.

The term "Immigration Act" means the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States"; and the term "immigration laws" includes such Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens.

SEC. 2. (a) That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910. This provision shall not apply to the following, and they shall not be counted in reckoning any of the percentage limits provided in this Act: (1) Government officials, their families, attendants, servants, and employees; (2) aliens in continuous transit through the United States; (3) aliens lawfully admitted to the United States who later go in transit from one part of the United States to another through foreign contiguous territory; (4) aliens visiting the United States as tourists or temporarily for business or pleasure; (5) aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration; (6) aliens from the so-called Asiatic barred zone, as described in section 3 of the Immigration Act; (7) aliens who have resided continuously for at least five years immediately preceding the time of their application for admission to the United States in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, countries of Central and South America, or adjacent islands; or (8) aliens

under the age of eighteen who are children of citizens of the United States.

(b) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies or dependencies for which separate enumeration was made in the United States census of 1910.

(c) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this Act, prepare a statement showing the number of persons of the various nationalities resident in the United States as determined by the United States census of 1910, which statement shall be the population basis for the purposes of this Act. In case of changes in political boundaries in foreign countries occurring subsequent to 1910 and resulting (1) in the creation of new countries, the Governments of which are recognized by the United States, or (2) in the transfer of territory from one country to another, such transfer being recognized by the United States, such officials, jointly, shall estimate the number of persons resident in the United States in 1910 who were born within the area included in such new countries or in such territory so transferred, and revise the population basis as to each country involved in such change of political boundary. For the purpose of such revision and for the purposes of this Act generally aliens born in the area included in any such new country shall be considered as having been born in such country, and aliens born in any territory so transferred shall be considered as having been born in the country to which such territory was transferred.

(d) When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: *Provided*, That the number of aliens of any nationality who may be admitted in any month shall not exceed 20 per centum of the total number of aliens of such nationality who are admissible in that fiscal year: *Provided further*, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this provisio who enter the United States before such maximum number shall have entered shall (unless excluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act: *Provided further*, That in the enforcement of this Act preference shall be given, so far as possible, to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancées (1) of citizens of the United States, (2) of aliens now in the United States who have applied for citizenship in the manner provided by law, or (3) of persons eligible to United States citizenship who served in the military or naval forces of the United States at any time between April 6, 1917, and November 11, 1918, both dates

inclusive, and have been separated from such forces under honorable conditions.

SEC. 3. That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall, as soon as feasible after the enactment of this Act, and from time to time thereafter, prescribe rules and regulations necessary to carry the provisions of this Act into effect. He shall, as soon as feasible after the enactment of this Act, publish a statement showing the number of aliens of the various nationalities who may be admitted to the United States between the date this Act becomes effective and the end of the current fiscal year, and on June 30 thereafter he shall publish a statement showing the number of aliens of the various nationalities who may be admitted during the ensuing fiscal year. He shall also publish monthly statements during the time this Act remains in force showing the number of aliens of each nationality already admitted during the then current fiscal year and the number who may be admitted under the provisions of this Act during the remainder of such year, but when 75 per centum of the maximum number of any nationality admissible during the fiscal year shall have been admitted such statements shall be issued weekly thereafter. All statements shall be made available for general publication and shall be mailed to all transportation companies bringing aliens to the United States who shall request the same and shall file with the Department of Labor the address to which such statements shall be sent. The Secretary of Labor shall also submit such statements to the Secretary of State, who shall transmit the information contained therein to the proper diplomatic and consular officials of the United States, which officials shall make the same

available to persons intending to emigrate to the United States and to others who may apply.

SEC. 4. That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws.

SEC. 5. That this Act shall take effect and be enforced fifteen days after its enactment (except sections 1 and 3 and subdivisions (b) and (c) of section 2, which shall take effect immediately upon the enactment of this Act) and shall continue in force until June 30, 1922, and the number of aliens of any nationality who may be admitted during the remaining period of the current fiscal year, from the date when this Act becomes effective to June 30, shall be limited in proportion to the number admissible during the fiscal year 1922.

SEC. 6. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel, to bring to the United States either from a foreign country or any insular possession of the United States any alien not admissible under the terms of this Act or regulations made thereunder, and if it appears to the satisfaction of the Secretary of Labor that any alien has been so brought, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200 for each alien so brought, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs

to the alien on whose account assessed. No vessel shall be granted clearance papers pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine. Such fine shall not be remitted or refunded unless it appears to the satisfaction of the Secretary of Labor that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such person or the owner, master, agent, or consignee of the vessel, prior to the departure of the vessel from the last seaport in a foreign country or insular possession of the United States.

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IN THE

Supreme Court of the United States

No. 221

October Term, 1923.

COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK,

Petitioner,

vs.

GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF THE RESPONDENTS.

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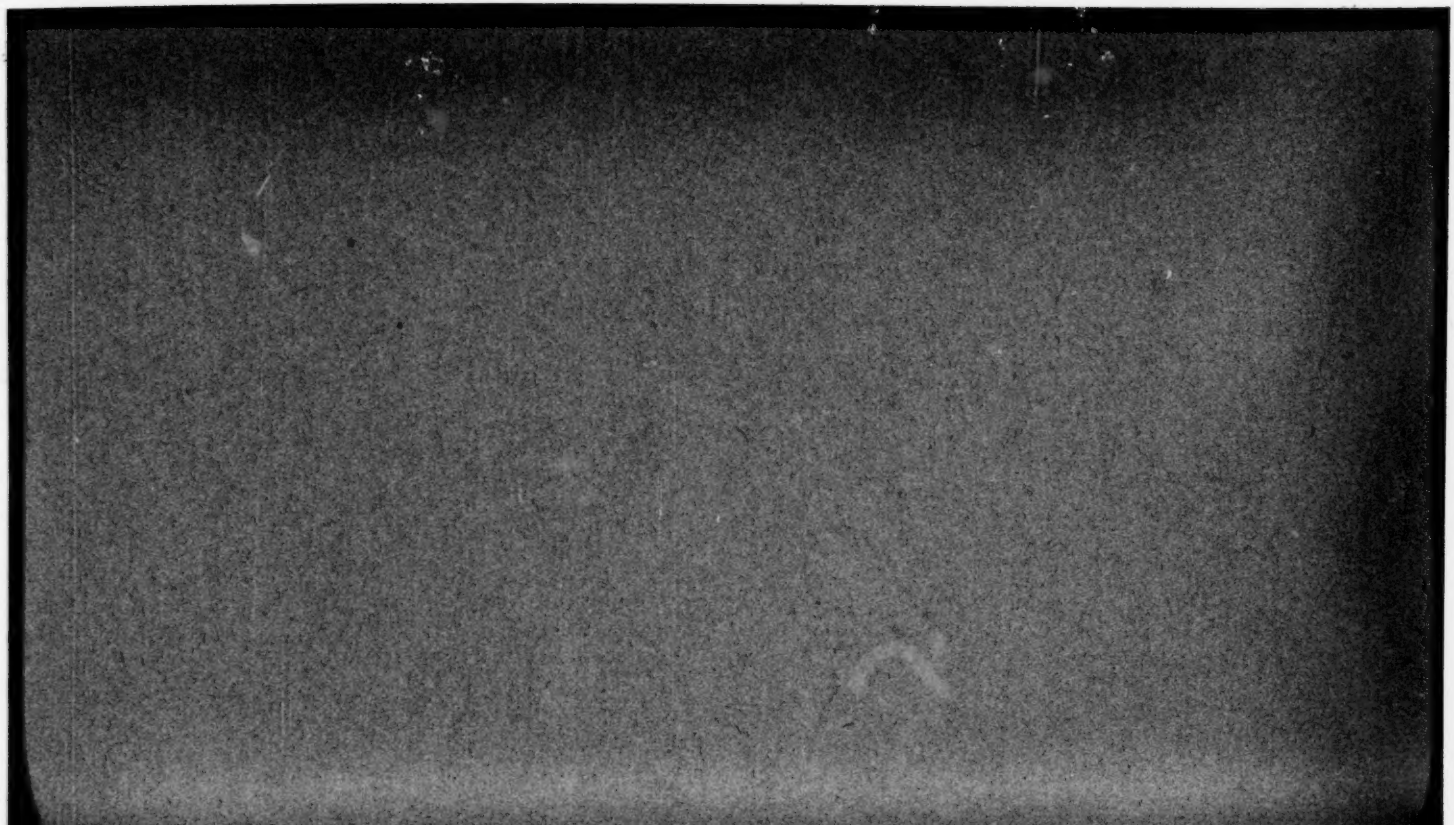

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK, Petitioner, v. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Respondents.	No. 221.

BRIEF ON BEHALF OF THE RESPONDENTS.

Statement.

This cause comes to this court upon a writ of *certiorari* directed to the United States Circuit Court of Appeals, for the Second Circuit, to review its determination (Tr. p. 59-60; fols. 64-65), affirming an order of the District Court of the United States, for the Southern District of New York (Tr. p. 58-59; fols. 61-62), sustaining

a writ of habeas corpus sued out by the respondents, releasing and discharging them from the custody of the petitioner, and admitting them into the United States (Tr. fol. 129), after they had been ordered excluded as coming here in violation of the Act of May 19, 1921, in that they were natives of a country whose quota had been filled (Tr. fols. 54-56), and after the affirmance of such determination by the Secretary of Labor (Tr. fol. 57), the respondents being the wife and child (Tr. fols. 7 to 8) of a minister and legally admitted alien resident of the United States, and a declarant (Tr. fols. 9 to 10).

Question and Statutes Involved.

The question presented is whether under the Immigration *Act of May 19, 1921*, Section 2 (d), 42 Stat. c. 8, p. 6, excepting ministers of any religious denomination from the quota provisions of that Act, Section 4, providing that it is in addition to the provisions of the immigration laws and Section 3 of the *Act of February 5, 1917* (39 Stat. 874, 876),† excepting ministers and their legal wives or children under sixteen years of age from the exclusion provisions of that Act, a minister's wife and children, as well as himself are excepted from the quota provisions (see Petitioner's Assignment of Errors "Second", Tr. fols. 132-133; Petitioner's brief, p. 3).

The District Court held (278 Fed. 564, 565):

> "* * * The entire scope of the legislation prevents the narrow interpretation."

* * * * *

† Set out at length, Appendix, Petitioner's brief, PP. 25-38, inclusive.

> "* * * The Act of 1921, interpreted in the light of the controlling Immigration Act of 1917, should be construed so as to include within the exceptions from the quota provisions the wife and children under sixteen years of a minister, as well as the minister himself." (Tr. fols. 118, 119).

The Circuit Court of Appeals affirmed this ruling, and it is the correctness of this ruling which is challenged by the petitioner in this court.

Argument and Law.

I.

The decision of the Circuit Court of Appeals announces a sound principle of construction, and is a reasonable, fair and just interpretation of the immigration acts in question, and clearly typifies the spirit and intention of Congress.

The Act of May 19, 1921, provides that the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year, shall be limited to three per centum of the number of foreign born persons of such nationality resident in the United States as determined by the United States Census of 1910. It is further provided,

in Section 2 (d) of said Act, that the following persons are excepted from its operation:

> "Provided further, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, *ministers of any religious denomination*, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States * * *" (Italics ours).

The Act of May 19, 1921, is entitled "An Act to limit the immigration of aliens into the United States," and Section 2 (a) thereof declares the number admissible in any fiscal year. But Section 4 thereof provides:

> "That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws."

Thus, the Act of February 5, 1917, which is the basic immigration law was not repealed, but continued in force and effect, the Act of May 19, 1921, expressly stating, in said Section 4, that it was

> "* * * *not in substitution for* the provisions of the immigration laws." (Italics ours).

Section 3 of the Act of February 5, 1917, enumerates the excluded classes. Said Section also provides that it does not apply to *ministers, nor to their legal wives, nor their children under sixteen years of age, who accompany them, or who subsequently may apply for admission to the United States.*

Solomon Gottlieb, the husband and father, respectively, of the respondents is a minister of a religious denomination, and the respondents were coming to permanently reside here with him (Tr. fols. 11-12). Therefore, it was and is contended that under Section 3 of the Act of February 5, 1917, they had an unrestricted right to enter since they did not come within the excluded classes.

Under the Congressional enactment of May 19, 1921, Section 2 (d), ministers of any religious denomination are excepted from the operation of the provisions of that Act, and this legislation, as shown, did not repeal that part of Section 3 of the Act of February 5, 1917, which we contend accords the right of entry generally to the legal wife or children under sixteen years of age of a minister.

The petitioner's contention is that under the Act of May 19, 1921 (H. R. 4075), the respondents are mandatorily excludable, and that no exception whatever was made so as to exclude from the operation of its provisions, the wives and children of ministers.

In affirming the determination of the District Court, the Circuit Court of Appeals said (285 Fed. 300):

> "* * * We construe the acts of 1917 and 1921 as one statute, the second act being,

as provided therein, an *addition* to and not a substitute for the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, *but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted.* Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it cannot be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister, but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed act of 1917 has been withdrawn." (Tr. fol. 60, p. 58) (Italics ours).

Petitioner contends that this was an erroneous construction, asserting that the proviso in Section 3 of the Act of February 5, 1917, excepting

ministers, their wives and children under sixteen years of age who accompany them or who subsequently may apply for admission to the United States, is not a general exception applicable to the entire section, but that this proviso relates solely to what has been commonly termed the "Asiatic Barred Zone" (Petitioner's brief, p. 7), and to emphasize the contention it is said that said excepting provision follows immediately those provisions relating to the Asiatic Barred Zone (Petitioner's brief, p. 6). Attention is directed to the point by asserting: "The language is clear. It does not say 'this *section,* however, shall not apply to persons of the following status or occupations.' It says '*the provision next foregoing,* however, shall not apply, etc.' " (Petitioner's brief, p. 7). Special attention is called to Subdivision (6) of the Act of 1921, providing that aliens coming from the so-called Asiatic Barred Zone are not to be counted in reckoning any of the percentage limits provided in said Act (Petitioner's brief, p. 8). The claim is untenable.

If the exception is not to be regarded as general and applicable to the entire section, it results in a right of entry being granted to the wives and children of ministers *coming from the barred zone,* while it denies a similar right of entry *to persons of the same class* coming from *non-barred geographical areas.* The absurdity of such a construction can hardly be doubted.

It is said that the Quota Law of 1921 is an Act to *limit* rather than to *regulate* the immigration of aliens, which is said to be the purpose of the Act of 1917 (Petitioner's brief, p. 8). We confess ourselves unable to appreciate the distinction, if any really exists, for both

Acts are in their true sense restrictive as well as regulatory. The Chinese Exclusion Act † and the Contract Labor Law ‡ were as much *limitations* on the extent of the permissible immigration to the United States, as are the Acts of 1917 and 1921. The question is not one of distinction between regulation and limitation, but whether the law involved, in the light of its object, fairly and sensibly construed, excludes the family of a minister, where he is himself expressly exempted from the barrier to admission.

The argument is advanced that if the construction of the Circuit Court of Appeals is to be upheld, it will extend to absurd lengths, and *United States ex rel Markarian* vs. *Tod*, 290 Fed. 198, is cited, where it was held by the same court (following the reasoning in the instant case),* that an alien returning from abroad where he had gone for the purpose of being married, might bring back with him his wife, notwithstanding the fact that the quota of her nationals had been filled, and that this would require the admission of aliens who had entered before the passage of the Quota Law, as well as of all those who enter under it (Petitioner's brief, p. 22). We do not share the view adopted by the Circuit Court of Appeals in the *Markarian* case, to justify the alien's right to enter, and doubt the correctness of the application of the ruling in the case at bar to that one, because the Act does not exempt the wife of an alien who goes abroad to marry, and it might very well furnish a medium for circumvention of quota allotment. The case at bar is distinguishable not only in point of facts, but

† Supplement, page 30.
‡ Supplement, page 33.
* *Ante* pages 5-6.

by virtue of the express exemption, in Section 3 of the Act of 1917, applicable to ministers and their wives and children, and the further express exemption contained in the Act of 1921, applicable to ministers.

Petitioner stresses the literal language of the statute, *i. e.*, the "*provision next foregoing*", as indicative of the intention of Congress not to make the exception a general one and applicable to the entire section, citing *U. S.* vs. *Bernays*, 158 Fed. 792, where it was held that a proviso should be construed with reference to the subject matter of the sentence of which it forms a part (Petitioner's brief, p. 7). This is true as a bare statement of a rule of statutory construction but it must be manifest that it is not applicable to or decisive of every given case. The point made is not new, as may be seen from the case of *Church of the Holy Trinity* vs. *United States*, 143 U. S. 457, which involved the construction of the Act of February 26, 1885, c. 164, 23 Stat. 332, which in terms prohibited the importation and migration of aliens under contract or agreement to perform labor in the United States. *The language of the Act was clear and unequivocal. It prohibited the importation of aliens under contract for services "*of any kind*". It contained, at the end of the fifth section, a specific proviso that the provisions of that Act should not apply to professional actors, artists, lecturers or singers, nor to persons employed strictly as personal or domestic servants, * * just as Section

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* See Supplement, p. 33, where the relevant portions of the Act appear *verbatim*.

** *Vide infra*, p. 33.

3 of the Act of February 5, 1917, contains a proviso excepting Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, merchants, and travellers for curiosity or pleasure, and their legal wives and children under sixteen years of age who accompany them, or who subsequently apply for admission to the United States. No exception whatever was made in the Act of February 26, 1885, with regard to the employment of a clergyman. The Act expressly declared the persons to whom it was inapplicable. Yet this court held the Act inapplicable to a clergyman, declining to follow the literal wording of the Statute, and declaring that the Act should be construed according to its spirit, further holding that it was clear that it was aimed at physical labor, and that giving it a fair construction, it could not be said to exclude one whose work involved mental rather than physical labor.

This court, speaking through Judge Brewer said (P. 459):

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation,

> or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.

That was a much stronger case than this, for the Act of February 26, 1885, nowhere in its provisions mentioned a clergyman, while the Act of February 5, 1917, expressly mentions ministers and their wives and children.

In *Chung Toy Ho*, 42 Fed. 398,

Section 6 of the Act of July 5, 1884, c. 220, 23 Stat. 115 (Chinese Exclusion Act) was construed in connection with the Treaty with China of November 17, 1880, 22 Stat. 826. That Act* required "every Chinese person", other than a laborer, coming to this country, to be identified by a certificate from the Chinese Government, and provided that such certificate should be the sole evidence permissible on the part of the person producing the same, to establish a right of entry into the United States.

Article II of the Treaty with China, of November 17, 1880 **, dispensed with the necessity of such certificate in the case of a Chinese merchant, and provided that he could come and go of his own free will and accord, and placed him on a par with citizens and subjects of the most favored nation. The husband and father of the petitioners in that case was a Chinese merchant dwelling in the United States, and

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* Supplement, p. 30 where the relevant part appears.

** Supplement, p. 30 *verbatim*.

they came here to join him and reside with him. They did not have the certificate required by Section 6 of the Act of July 5, 1884, and were ordered excluded on that ground. The question involved was whether they could enter without it, *by virtue of the right of entry of the husband and father*, though neither the Act nor the Treaty mentioned or exempted the wife or child of such Chinese merchant. The Court held they were admissible, saying (P. 399):

> "The manifest purpose of this legislation is to exclude Chinese laborers, from coming or returning to the United States. The other classes—'teacher, student, and merchant'—are not required to have certificates before they can be admitted into the country, because their admission is intended to be restrained or limited, but to prevent laborers from being admitted under the guise or in the character of such classes.
>
> There is no limitation on the right of these classes to come within and dwell in the United States. The statute only requires that such a person shall furnish the prescribed evidence that he belongs to one of these favored classes, when he may come and go at pleasure.
>
> The admission of the petitioners is not within the mischief that the exclusion act was intended to remedy. They are both females, the child being about eight years of age. It is common knowledge that Chinese women are not laborers. The station in life of the petitioners, being the wife

and child of a merchant, also shows they do not belong to the laboring class.

The petitioners are not within the purview of the exclusion act of 1888, which is confined to laborers. Do they come within that of section 6 of the act of 1884, which requires 'every Chinese person' other than a laborer to procure from his own government the certificate required by said section before he can be admitted into the United States?

Confessedly, the petitioners are 'Chinese persons', and are therefore within the letter of the statute. But in my judgment they are not the 'persons' contemplated by congress in the passage of the act.

Chinese women are not teachers, students, or merchants; and therefore they cannot, as such, obtain the certificate necessary to show they belong to the favored class. But, *as the wives and children of 'teachers, students, and merchants', they do in fact belong to such class;* and the proof of such relation with a person of this class, entitled to admission, is plenary evidence of such fact." (Italics ours).

The Court then said that it ought not to be lightly or without cogent reason concluded that Congress in the passage of the Act of 1884 really intended to limit or restrain its operation in this respect, remarking (p. 399):

"The treaty (article 2) declares that a Chinese merchant may bring his 'body and household servants' with him into the country * * *.

It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, *ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children* * * * (Italics ours).

There is nothing in the act of 1884 that indicates an intention on the part of congress to limit or restrain the privileges conceded to Chinese merchants by this article of the treaty. It only adds a rule or measure of evidence by which the fact of being such merchants may be conclusively established.

* * * * *

My conclusion is that under the treaty and statute, taken together, a Chinese merchant who is entitled to come into and dwell in the United States *is thereby entitled to bring with him, and have with him, his wife and children.* The company of the one, and the care and custody of the other, are his by natural right; and he ought not to be deprived of either, unless the intention of congress to do so is clear and unmistakeable." (Italics ours).

To like effect is *Re Tung Yeong,* 19 Fed. 184.

In *United States* vs. *Mrs. Gue Lim,* 176 U. S. 459, this Court also construed the Chinese Exclusion Act of July 5, 1884, c. 220, 23 Stat. 115,(a) in connection with the Treaty with China of November 17, 1880, 22 Stat. 826,(b) and the Convention with China of March 17, 1894, 28 Stat. 1211.(c) The aliens in that case were the wife and child of a Chinese merchant, and they were also ordered excluded because of their failure to produce the required certificate. There was nothing in the Act, Treaty or Convention which mentioned or exempted such wife or child, yet this court held that by fair construction they could not be excluded, and that their right to come in was theirs *by reason of their relationship to the father.*

This court, speaking through Judge Peckham, said (P. 461):

> "The question here arising in regard to the correctness of the decision of the District Court in the case of the married woman depends for its solution upon the construction to be given to the sixth section of the act of Congress of 1884. * * *"

(On Page 462):

> "That section must be construed in connection with the treaty concluded between this country and China in November, 1880, 22 Stat. 826.

(a) Supplement, page 30.

(b) Ibid.

(c) Supplement, page 32, relevant part.

It is contended, on the part of counsel for the Government that by the subsequent treaty of March, 1894, 28 Stat. 1210, the two Governments have agreed that the requirements of a certificate as provided for in the sixth section of the act of Congress shall apply to all permitted Chinese subjects who must, without exception, produce such certificates."

(On Page 463):

"We do not think the treaty of 1894 alters the result flowing from the treaty of 1880 and the act of 1884. *The question is, whether* under the act of 1884, construed in connection with the treaty of 1880, *the wife of a Chinese merchant, domiciled in this country, may enter the United States without a certificate, because she is the wife of such merchant.* (Italics ours).

Although the third article of the treaty of 1894 does speak of certificates for Chinese subjects therein described, who already enjoy the right to enter the country, the question recurs whether the certificate of the husband who himself enjoys the right is not enough for the wife, the fact being proved or admitted that she is such wife. Possibly the result of the treaty of 1894 may be held to be, instead of simply prohibiting the entrance of Chinese laborers, to restrict the right of entry to those classes who are specially named in the third article of the treaty. But the question would still remain whether the wives of the members

of the classes privileged to enter, were not entitled themselves to enter *by reason of the right of the husband* and without the certificate mentioned in the act of 1884." (Italics ours).

(On Page 464):

"This court has already sustained the power of Congress to provide for excluding or expelling Chinese, even in contravention of a treaty; also the power to entrust the final determination of the facts upon which the individual is to be expelled, to an executive officer. *Fong Yoe Ting* vs. *U. S.* 149 U. S. 698; *Wong Wing* vs. *U. S.* 163 U. S. 228 * * *. The question is, What did Congress mean by the act of 1884?

* * * * *

It is impossible to entertain the belief that the Congress of the United States, immediately after the conclusion of a treaty between this country and the Chinese Empire, would, while assuming to carry out its provisions, pass an act which violated or unreasonably obstructed the obligation of any provision of the treaty.

* * * * *

There is nothing in the act of 1884, which, in terms, enumerates and provides for the admission of particular classes of persons. It speaks in the sixth section of those who may be entitled under the treaty or under the act to come within the United States, but the act does not assume to enlarge the

number or character of the classes specially named in the treaty as entitled to admission. It is plain that in this case the woman could not obtain the certificate as a member of any of those specially enumerated classes. She is neither an official, a teacher, a student, a merchant nor a traveller for curiosity or pleasure. *She is simply the wife of a merchant, who is himself a member of one of the classes mentioned in the treaty as entitled to admission. And yet it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission, meant that they should be excluded. If not, then they would be entitled to admission because they were such wives, although not in terms mentioned in the treaty.* (Italics ours).

Does the sixth section mean that in such case the wife must obtain the certificate therein provided for? We think not.

* * * * *

Various other provisions in the section render it plain to our minds that it was never intended to extend to the wives of persons who were themselves entitled to entry." (Italics ours).

(On Page 467):

"While the literal construction of the section would require a certificate, as therein stated, from every Chinese person, other than a laborer, who should come into the

country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant, among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate.

'Nothing is better settled', says the present Chief Justice, in *Lau Ow Bew* vs. *U. S.*, 144 U. S. 47, 59, 'than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion'.

The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the guise of being one of the classes permitted by the treaty. It is the coming of Chinese laborers that the act is aimed against."

(On Page 468):

"To hold that a certificate is required in this case is to decide that the woman cannot come into the country at all, for it is not possible for her to comply with the act, because she cannot in any event procure the certificate even by returning to China. *She must come in as the wife of her domiciled husband or not at all. The act was never meant to accomplish the result of per-*

manently excluding the wife under the circumstances of this case, and we think that, properly and reasonably construed, it does not do so. (Italics ours).

* * * * *

They come in by reason of their relationship to the father * * *. When the fact is established, to the satisfaction of the authorities that the person claiming to enter, either as the wife or minor child, is in fact the wife or minor child of one of the members of the class mentioned in the treaty as entitled to enter, then that person is entitled to admission. * * *" (Italics ours).

Applying the rule of construction in the cases referred to, coupled with the exemption of ministers and their wives and children in Section 3 of the Act of February 5, 1917, and the further exception as to ministers in the Act of May 19, 1921, it seems clear that the challenge to the correctness of the lower court's construction is entirely lacking in logic and merit.

II.

The doctrine of sensible construction and implied exception.

There is yet another, and what we maintain conclusive and decisive answer to the contention of the petitioner, that from the mere fact that

the act does not in so many words include the family of a minister, that congress intended to exclude them while admitting him, and that is this: That for the purpose of avoiding an unjust, oppressive, or absurd consequence or conclusion, it will be presumed that the legislature intended exceptions to its language, where without them such a result would obtain.

This was expressly held in

Church of the Holy Trinity, supra,

where Mr. Justice Brewer, quoting from *United States* vs. *Kirby,* 7 Wall. 482, 486, said (P. 461):

> " 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature *intended exceptions* to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' " (Italics ours).

It has been said that—

> "These immigration statutes are to be *construed as a whole, and not by singling out particular words or sections,* and interpreting them according to their strict letter. A thing may be within the letter of the statute, and yet not within the statute, be-

cause not within its spirit, nor within the intention of its makers." (Italics ours.)

From *United States ex rel Andersen* vs. *Burke*, 99 Fed., 895, 898.

Is it within the spirit of the statute, or the intention of its makers, that a minister should be permitted the right of entry, regardless of the quota allotment being exhausted, and yet not give a similar right of entry to the members of his family? It would seem most unreasonable to suppose that such was the legislative intent —to admit a minister and exclude his family.

In *United States* vs. *Kirby* and in *United Staes ex rel Andersen* vs. *Burke, supra*, and *Lau Ow Bew* vs. *United States, post*, it was held that a *sensible* construction should be given to immigration statutes; and if a sensible construction be given to the act of May 19, 1921, it is entirely clear that it is not within the spirit of the statute to admit a minister and exclude the members of his family.

In *Lau Ow Bew* vs. *United States*, 144 U. S., 47, 59; 12 Sup. Ct., 520; 36 L. ed., 44, a deportation case, Chief Justice Fuller said (page 59):

"Nothing is better settled than that statutes should receive a *sensible* construction, such as will effectuate the legislative intention, and, if possible, *so as to avoid an unjust or an absurd conclusion.*" (Italics ours).

And *U. S.* v. *Mrs. Gue Lim, supra.*

In *United States* vs. *Barnes*, 222 U. S., 513, 519, Mr. Justice VAN DEVANTER, speaking of the rule of implied exception said (page 519):

> "The maxim invoked expresses a rule of construction, not of substantive law, and serves only as an aid in discerning the legislative intent when that is not otherwise manifest. In such instances it is of deciding importance; in others, not. In the instance now before us too much is claimed for it.

On page 520:

> * * * It is the settled rule of decision in this court that where there is subsequent legislation upon such a subject it carries with it an implication that the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears.
>
> * * * " 'The more natural, if not the necessary inference in all such cases is, that the legislature intends the new laws to be auxiliary to, and in aid of the purposes of the old law * * * There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions, to lead to the conclusion that the latter laws abrogated, and were designed to abrogate the former.' "

In *City of Lexington* vs. *Commercial Bank*, 130 Mo. App., 687, 692, the Court said:

> "The maxim that the expression of one thing is the exclusion of others not ex-

pressed is not to be accepted as a hard and fast canon of statutory construction, but as a guide to point to the legislative intent which, when ascertained, should dominate the construction to be placed on the enactment (*McFarland* v. *Railway*, 94 Mo., App., 1, c. 342). It has been said, if there is some special reason for mentioning one and none for mentioning the other, the absence of any mention of the latter will not operate as an exclusion and that the maxim does not apply to a statute in which mention is made by way of example or made in affirmance of existing law or to remove doubts, or when the context shows a different intention. To ascertain the intention of a statute, *it should be read in view of all the surrounding facts and circumstances, under which it was enacted*, and, it may be added 'common sense and good faith are the leading and principal characteristics of all interpretation.'" (Italics ours).

And *Re Chung Toy Ho, supra.*

Bearing in mind the rule of sensible construction and intended exception, and that a construction should be given as not to lead to injustice, oppression or an absurd consequence, the conclusion is irresistible that it was not intended that the family of a minister should be excluded, because of the exhaustion of the quota allotment, where the minister himself was excepted therefrom.

There is not the slightest expression in the restrictive Act of May 19, 1921, unless it is

read into it by sheer force, which indicates that it was the intention of Congress to admit a minister and exclude the members of his family. Neither the letter nor the spirit of the Act calls for a construction imputing to Congress the intention to create a condition so unreasonable. Nothing in the scope of the statute seems to contemplate, or can be rationally held to contemplate the interpretation contended for, namely, the exclusion of "parts of a family".*

Under the Act of February 5, 1917, these aliens were admissible, and since the Act of May 19, 1921, is in *addition to* and *not in substitution for* the immigration laws, Congress obviously cannot be said to have intended that law as a substitute, so as to include therein those admissible under the basic (1917) Act.

In other words, Congress, *in substance,* said this:

> "*In addition* to those already excludable under the 1917 Act, we exclude those we now specifically mention."

That, we submit, is about all that can be said the 1921 Act was intended to accomplish. That is to say, it added an additional class to that *already excludable* under the basic Act, *but did not touch or affect those admissible under it.*

Here we see a definite purpose to exclude the immigration and bringing in of persons intending to migrate to the United States if they belong to the excluded classes.

Ministers of religious denominations are expressly excepted, and although the members of their immediate family, as wife and children,

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* Jenks & Lauck, *Ad hoc,* The Immigration Problem (1912), PP. 335-336.

are not specifically mentioned, nevertheless, it must be apparent that this exception was intended to apply as well to them, for, as stated, to hold the converse would be, in effect, to rule that while he might come, his family might not.

This cannot be the just interpretation of the Act upon the subject of this restrictive immigration, and such interpretation is not justified by the terms of both Acts, upon a general survey of them in all their parts, or by the reports of the various committees. The traditional policy of the United States being to admit all aliens, except those specifically excluded, it is respectfully submitted, that with the rule of sensible construction and intended exception in mind, it cannot be held that it was the intention of Congress by this Act, not to admit the respondents, as the members of the family of a minister, where he was expressly excepted from the operation of its provisions.

III.

The Act of May 19, 1921.

It has been said that the *object* and *purpose* of a law is the ever insistent consideration in its interpretation (*United States* vs. *Antikamnia Co.* 231 U. S. 654, 657).

A consideration of the reasons leading to the passage of this Act clearly discloses its *object* and *purpose*, and demonstrates that the wife and children of a minister were not intended to be included in the quota allotment provisions.

A reference to the report of the Senate Committee on Immigration to accompany H. R. 4075

(*Report No. 17, April 28, 1921, 67th Congress, First Session*) made by Mr. Dillingham, the purported author of the law, clearly indicates that it was not the intention by this legislation, to make the Act of May 19, 1921, general in its operation. At page 7, thereof, it is stated:

> "It was the new immigration coming in unprecedented numbers which created our pre-war problem and, as already indicated, it is the impending return of this movement to its pre-war status which in the opinion of the Committee *constitutes the present emergency.* Unlike the older immigration, which distributed itself to every part of the country, entered every branch of activity, and was, as a rule, quickly and thoroughly assimilated, *the new immigration has consisted largely of single men,* it has gone directly to the cities and to the manufacturing centres, and has remained there. It has moved in racial groups and to a large extent has maintained them, and compared with the older immigration it, as a rule, shows a slighter tendency to become American citizens and the number who have gone to the land have been negligible.
>
> The Committee are of the opinion that in the present emergency a restriction should be applied *to the type last described* and are convinced that such restriction should be accomplished through some measure that will insure definite effectiveness." (Italics ours).

Thus, it is established, that the "type" of immigrant which the emergency measure was

aimed at and directed, was not the wife and children of a minister. That "type", was, manifestly, not intended.

As further illustrating that it was not intended to make general in its operation, the restrictive Act of May 19, 1921, the following from Page 6 of the same Report, emphasizes the contention:

> "For reasons stated and for others which will further appear in this report the Committee are of the opinion that *no emergency exists at the present time which warrants a general prohibition* of European immigration into the United States, although it has been advocated by some.
>
> *A prohibition measure of this character has never been resorted to by the United States and should only be adopted under the most extraordinary circumstances.*"
> (Italics ours).

Here we have in most concrete form, the definite indication that it was not the intention of Congress by this restrictive legislation to make it operate as a *general* prohibition, the Report expressly stating that no emergency exists which warrants it, and further declaring that it had never been resorted to before.

That legislation was aimed at a particular "type" of aliens regarded as undesirable, in respect to which a minister was not included, and it can hardly be said that Congress intended to include his family in the undesirable "type", where he, himself, was exempted and regarded as desirable.

It was never suggested in the Committee discussions or Congressional debates, that the

family of a minister was aimed at and should be excluded, or that their right of entry under the basic Act of February 5, 1917, should in any wise be affected by the Act of May 19, 1921. If Congress intended that such should be the case, it would have plainly so expressed it, and failure to find any such expression must be regarded as a negative intention on its part. This view is confirmed by the above quoted portion of the Senate Committee's Report, that the legislation was not intended as a general prohibition, nor that conditions warranted it and such has been the ruling under the weight of authority (*Church of the Holy Trinity* v. *U. S., supra; Chung Toy Ho, supra; U. S.* v. *Mrs. Gue Lim, supra*).

Conclusion.

For the reasons hereinbefore urged, it is respectfully submitted that the determination of the Circuit Court of Appeals affirming the order of the District Court, releasing and discharging the respondents and admitting them into the United States is correct, and that its determination, should, therefore, be affirmed.

January, 1924.

Respectfully submitted,

JOSEPH G. M. BROWNE,
Counsel for Respondents.

BARNETT E. KOPELMAN,
With him on the brief.

SUPPLEMENT.

Treaty with China, November 17, 1880.

(Treaty between the United States and China, concerning immigration. Concluded November 17, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 9, 1881; ratifications exchanged July 19, 1881; proclaimed October 5, 1881; 22 Stat. 826).

ARTICLE II.

CHINESE SUBJECTS IN THE UNITED STATES.

Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.

Chinese Exclusion Act, July 5, 1884.

(An act to amend an act entitled "An Act to execute certain treaty stipulations relating to Chinese approved May sixth eighten hundred and eighty two; Approved July 5, 1884; 23 Stat. 116).

CHINESE, OTHER THAN LABORERS, TO BE IDENTIFIED BY CERTIFICATE FROM CHINESE GOVERNMENT.

Sec. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who

may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid * * *. Such certificate vised as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced * * * and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States * * *.

Convention with China, March 17, 1894.

(Convention between the United States of America and the Empire of China. Emigration between the two countries. Signed at Washington, March 17, 1894; ratification advised by the Senate August 13, 1894; ratified by the President August 22, 1894; ratified by the Emperor of China in due form; ratifications exchanged at Washington December 7, 1894; proclaimed December 8, 1894; 28 Stat. 1211).

ARTICLE III.

CLASSES PERMITTED TO ENTER.

The provisions of this Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided vised by the diplomatic or consular representative of the United States in the country or port whence they depart.

Contract Labor Law, February 26, 1885.

(An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia; approved, February 26, 1885; c. 164; 23 Stat. 332).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

* * * * *

Provided, That skilled labor for that purpose cannot be otherwise obtained: nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants * * *.

Office Supreme Court, U.
FILED
MAR 10 1924
WM. R. STANSB
CLE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 221.

COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK,

Petitioner,

against

GITTEL GOTTLIEB and ISRAEL GOTTLIEB.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENTS' SUPPLEMENTAL BRIEF.

LOUIS MARSHALL,
JOSEPH G. M. BROWNE,
BARNET E. KOPELMAN,
MAX J. KOHLER,
of Counsel.

PRESS OF FREMONT PAYNE, INC., 80 Washington St., New York City.

SUBJECT INDEX.

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ARGUMENT:

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Supreme Court of the United States

OCTOBER TERM, 1923.

COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK, Petitioner,
against
GITTEL GOTTLIEB and ISRAEL GOTTLIEB.
No. 221.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENTS' SUPPLEMENTAL BRIEF.

The importance of the questions presented by the record in this case and the conceded hardship of a decision adverse to the respondents, are our justification for presenting additional considerations in support of the conclusions reached in the District Court and in the Circuit Court of Appeals. Every effort will be made to avoid repetition, although it may be necessary, incidentally, to refer to some of the authorities cited in the main brief.

POINTS.

I.

Giving due consideration to our past policy, to the provisions of our basic Immigration Act of 1917 and to the Quota Law of 1921, a clear purpose is manifest to avoid the separation of their wives and children from those husbands and fathers belonging to the classes enumerated in the second proviso of Section 2 (d) of the Quota Law, including "ministers of any religious denomination" who enter the United States. Such wives and children are, therefore, admissible as immigrants regardless of quota restrictions.

There can be no doubt that Congress intended to afford an exceptional privilege to those enumerated in the proviso. They were apparently looked upon as especially desirable immigrants. They include professional actors, artists, lecturers, singers, ministers of religious denominations, professors for colleges or seminaries, and aliens belonging to a recognized learned profession. Naturally they were regarded as likely to make valuable contributions to the moral, intellectual and artistic life of our country. It could not have been intended, when our doors were opened to them, that they would be subjected to the mental anguish and to the suffering attendant upon separation from their wives and children. Nor could it have been purposed that these wives and children should be left behind and isolated. The breaking up of the families of these

persons, leaving the husbands to pursue their vocations in the United States and the wives and children to languish in other lands and to depend for their protection upon strangers, could never have been contemplated by Congress when it conferred upon these selected persons the right to enter.

In the Brief of the Government, page 4, it is said:

> "We venture the opinion that there should be such elasticity in the practical administration of the law as would permit the Commissioner of Immigration to make an exception in isolated cases, *where the enforcement of the law requires the separation of a family, a result which seems to us abhorrent.*"

It is safe to say that such a result as that which the Petitioner is seeking to accomplish in the present case must have been just as abhorrent to the members of the Congress which enacted this proviso as it is to the learned counsel who are arguing for such a result. The welfare of the state is promoted by preserving the unity of the family. The well-being of the individual is preserved when he is free to pursue his activities without undergoing the suffering consequent upon a separation from his wife and children, and from anxiety for their security occasioned by such separation.

In the report rendered to Congress on December 5, 1910, by the Immigration Commission, of which Senator Dillingham, the father of the Quota Law, was the Chairman (Vol. I, page 42), the importance of preserving family life was emphasized, and the preferability of married immigrants to those who were unmarried, was dwelt upon.

In 1913, Dr. Charles W. Elliott submitted a report to the Carnegie Endowment for International

Peace, entitled *"Some Roads Towards Peace."* That far-sighted philosopher said:

> "The desirable immigrant is the healthy, strong man who comes to the new land with wife and children, meaning to settle there for good. All laws against contract labor impede family immigration, because a prudent head of a family wants to know before he starts from home where he is to earn his family's livelihood in the new land."

This merely expresses a truth recognized by every normal mind. That it has been interwoven into our immigration legislation will appear by reference to statutes, treaties and conventions in *pari materia,* and to decisions interpreting them.

(1) The Chinese Exclusion Act of July 5, 1884, read in conjunction with the Treaty with China of November 17, 1880, affords a striking illustration.

The statute required Chinese, other than laborers, to be identified by certificates issued by the Chinese Government. Chinese subjects who were merchants were, under the Treaty, accorded the right to go and to come of their own free will and accord. The wives and children of merchants were not mentioned, either in the Exclusion Act or in the Treaty. Yet it was held that they were entitled to come to the United States without the certificate and to be admitted, because the companionship of the wife and of the children of a Chinese merchant were his by natural right and that he should not be deprived of either unless Congress in clear and unmistakable terms so provided.

United States vs. *Mrs. Gue Lim,* 176 U. S., 459;

In re Chun Teoy Hoy, 42 Fed. Rep., 398, 399, 402.

In other words, where an exception was made in favor of a merchant as a member of a privileged class, his wife and children were intended to come within the same privilege even though they were not specified as members of the class.

(2) This rule was applied to the adopted children of Chinese non-laborers.

Ex parte Fong Yim, 134 Fed. Rep., 938; approved in
United States vs. *Tod,* 290 Fed. Rep., 689;
United States vs. *Lee Chee,* 224 Fed. Rep., 447.

In the first of these cases the Court regarded the subject as involving not only the right of wife and child to enter, but of husband and father to have them join him.

(3) Under the Gentlemen's Agreement with Japan it was provided that a husband domiciled in the United States might send for his wife. Under that agreement it was held that, even though the wife was a laborer and would not have been entitled to a passport had she sought admission with the avowed intention of assuming a status independent of her husband, she was, nevertheless, entitled to enter.

Ex parte Hasaye Sakaguchi, 277 Fed. Rep., 913, 915.
H. R. Report (67th Congress, 4th Session), No. 1621, pages 19-23.

(4) Under the so-called literacy test contained in Section 3 of the Immigration Act of 1917 all aliens over sixteen years of age, physically capable of reading, who could not read the English language or some other language or dialect, including Hebrew or Yiddish, were excluded from admission. It was, however, provided that any alien theretofore or thereafter admitted "may bring in or send for * * * his wife * * * whether such relative can read or not, and such relative shall be permitted to enter."

(5) Section 3 of the Act of 1917 likewise contains the provision which the Circuit Court of Appeals in this case held generally applicable, but which the Government contends relates merely to those coming from the Asiatic barred zone. By that clause an exception is made in favor of Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, and "their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States."

If this clause is to receive the interpretation given to it by the Circuit Court of Appeals, then it would apply to the wives and children of the similarly privileged classes of immigrants enumerated in the second proviso of Section 2, subdivision (d), of the Quota Law, inasmuch as the provisions of that law are declared by Section 4 to be "in addition to and not in substitution for the provisions of the immigration laws."

If that clause, however, relates solely to the enumerated classes who shall come from the Asiatic barred zone, then it is difficult to understand why the wives and children of persons of the designated classes, as, for example, ministers or religious teachers, shall be admitted as of right, while the wives and children of ministers of any religious denomination, specified in the second proviso of Section 2d of the Quota Law, shall not be admitted after the exhaustion of the quota of the nationality to which they belong. It is scarcely conceivable that the wives or children of a minister or of a teacher or artist from Afghanistan or Siam should be admitted, while the wife or the children of a person of similar occupation from England, Italy or Palestine should be excluded after the quotas of the countries named had been exceeded. Nobody would venture the assertion that the former are more desirable than the latter or are subject to more acute suffering, or are endowed with more profound emotions or are possessed of greater social needs.

(6) This is an especially significant inquiry when one considers the fact that, by Section 2 (a) of the Quota Law, it is provided that that Act is not to apply at all to eight enumerated categories, the sixth being *"aliens from the so-called Asiatic barred zone, as described in Section three of the Immigration Act."*

If the aliens referred to, who are "not to be counted in reckoning any of the percentage limits provided in this act" (the Quota Law), are to include the persons having the status or occupations named in the proviso contained in Section 3 of the

Act of 1917, which immediately follows the clause relating to the Asiatic barred zone, that would necessarily admit the legal wives or children under sixteen years of age of the designated persons coming from that barred zone.

Having thus, in the Quota Law itself, declared that the wives and children under sixteen years of age of ministers or religious teachers coming from the Asiatic barred zone shall be admitted, it would be ludicrous to attribute to Congress any different intention with respect to the wives and children of ministers of religious denominations coming from countries outside of the barred zone.

The injustice resulting from such irregularity should be avoided.

Lionberger vs. *Rouse,* 9 Wall., 476.

See also

Harless vs. *United States,* 88 Fed. Rep., 97, 102.

The words of Mr. Justice Johnson in *United States* vs. *Heth,* 3 Cranch., 409, are impressive:

> "* * * Where it can be shown, that a government has once adopted a certain rule of justice for its conduct, it is fair to infer that, in legislating afterwards upon the same subject, it intended to pursue the same rule, unless the contrary shall be clearly expressed."

Mr. Justice Washington said (page 411):

> "The change of expression in the latter law, I take to be perfectly accidental."

(7) As further indicative of a solicitous purpose to provide for the wives and children of immigrants, weight should be given to the last proviso of Section 2 (d) of the Quota Law, which, *dealing with* the general mass of immigrants who do not belong to any of the privileged classes previously enumerated, provides "that in the enforcement of this Act preference shall be given so far as possible to the *wives* * * * *children* under eighteen years of age and fiancees * * * of aliens now in the United States who have applied for citizenship in the manner provided by law."

(8) Returning to the Immigration Act of 1917, attention is now directed to Section 22, as indicative of a tender consideration for immigrants and their wives and children. It provides:

> "That whenever an alien shall have been naturalized *or shall have taken up his permanent residence in this country, and thereafter shall send for his wife or minor children to join him,* and said wife or any of said minor children shall be found to be affected with any contagious disorder, such wife or minor children shall be held, under such regulations as the Secretary of Labor shall prescribe, until it shall be determined whether the disorder will be easily curable or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable and the husband or father or other responsible person is willing to bear the expense of the treatment, they may be accorded treatment in hospital until cured and then be admitted, or if it shall be determined that they can be permitted to land with-

out danger to other persons, they may, if otherwise admissible, thereupon be admitted."

See

32 *Opinions of Attorney-General*, 209.

(9) As indicative of the same idea as to the non-separation of husbands from their wives and children, we direct attention to a number of foreign treaties and conventions bearing on the subject.

Thus from a recent compilation prepared by a Commission on Immigration appointed by the International Labor Office, entitled *"Emigration and Immigration, Legislation and Treaties,"* Geneva, 1922, we excerpt the following passages:

> "In the course of recent years, international agreements concerning emigration have developed to such an extent that it is no longer possible to neglect them; laws and treaties now form an indivisible whole" (page xi).
>
> "In practice, these provisions (seven preceding classes of regulations concerning immigration) are not always applied in a very rigid manner, and there are in most laws clauses which permit of exceptions being made, The application is much more important than the text itself. * * * *Many exceptional clauses facilitate the reunion of families. Wives, minor children,* old parents or other members of the family *or friends specified by the immigrants, are received either by way of exception* to the ordinary law, or under special conditions" (pages 218-19).

Examples in point from which this general statement is deduced are specified. For example, the term "immigrant" is expressly defined to include

wife and child in the following among other countries, according to the definitions reprinted (pages 155-159): Austria (page 156); Canada (page 157), as to officers and men connected with his Majesty's regular naval and military forces; Mexico (page 158). So, also, the term "emigrant" is in various countries expressly defined to include the families of such person (page 2 *et seq.*): Czechoslovakia (page 2); Finland (page 3); Poland (page 7).

In several recent special immigration treaties between different countries the family's right to accompany the immigrant is expressly provided for (see pages 342-344 for Franco-Italian Treaty of 1919, etc.). The Belgian treaties for repatriation with Germany, Italy and Switzerland of 1887, 1890 and 1896 in terms provide (page 393):

> "In the case of repatriation, wives shall not be separated from their husbands nor children from their parents, except in the case of persons treated or maintained by means of public funds."

The treaty of 1910 between Switzerland and Germany (page 361) to the same effect, is typical, and the general conclusion is expressed (page 361):

> "The country of origin undertakes to receive its nationals at any time, provided that they have preserved their rights of nationality. *This obligation usually includes the family of the person expelled.*"

See also, opinion of Judge Deady, in *Chun Teoy Hoy*, 42 Fed. Rep., 398, 399.

(10) Section 2 (a) of the Quota Law also enumerates as a class of immigrants who are not to be counted in reckoning any of the percentage limits provided in the Act:

> "8. Aliens under the age of eighteen years who are *children* of citizens of the United States."

In this connection we may be permitted to call attention to the fact, as illustrative of the inaccuracies and inconsistencies to be found in the Act, that in the last proviso of Section 2, subdivision (d), children under eighteen years of age of citizens of the United States and of alien declarants are among those to whom preference merely is given in the enforcement of the Act. Is it, therefore, especially significant that, in the previous proviso of the same section, no reference is made to the wives or children of the privileged classes, which include "ministers of any religious denomination"? Hasty draftsmanship is a sufficient explanation.

> "In this country, where statute law is the hurried work of over-busy individuals, very little importance can be attached to accidents of phraseology."
>
> *Upton* vs. *U. S.*, 19 Ct. Cl., 49.

(11) The fact that, in the second proviso of Section 2 (d) of the Quota Law, "aliens employed as domestic servants" are to be admitted, just as are ministers of any religious denomination and other professionals, even though the maximum number of aliens of the same nationality shall have entered the United States, naturally gives rise to the inference that Congress must have intended that the wives and minor children of such professionals were also admissible. There is an infinitely stronger

reason, based on public policy and the dictates of humanity, for admitting wives and children than for admitting domestic servants. It would be the very irony of fate, or rather the height of absurdity if a minister of religion coming to this country with his wife, his child and a domestic servant, were admitted with the servant, while his wife and child would be excluded because the quota limits had been reached. That was one of the considerations which impressed this Court in *United States* vs. *Mrs. Gue Lim, supra.* The words "together with their body and household servants," contained in the Treaty with China there under consideration, led to the conclusion that, although the wives and children of merchants were not mentioned, it must have been intended to include them, by necessary implication, in the Treaty.

In the course of the Government's Brief various arguments are adduced which we regard as fallacious and will now briefly consider:

(a) The Government's argument is based largely on the absence from the second proviso of Section 2 (d) of the Quota Law of a reference to the wives and children of the persons therein mentioned. This is merely an effort to apply the *expressio unius* rule to this statute. In view of the decisions in *United States* vs. *Mrs. Gue Lim, supra, Church of the Holy Trinity* vs. *United States,* 143 U. S., 457, *Lau Ow Bew* vs. *United States,* 144 U. S., 47, and *United States* vs. *Laws,* 163 U. S., 258, 265, there is no potency in its application here.

(*b*) The petitioner's brief, in attempting to minimize the argument that the wives and children of the persons enumerated in the second proviso of Section 2(d) are to be deemed included in its terms, calls attention to the fact that among the

classes specified are "nurses" and "aliens employed as domestic servants." From this it is contended that if the husbands, wives or children of "nurses" and "domestic servants" were to be regarded *ipso facto* as admissible immigrants, it would tend to increase the quota limits indefinitely.

The argument proceeds on an erroneous interpretation of the words referred to. These two classes are to be found among those specified in the fourth proviso of Section 3 of the Immigration Act of 1917, which relates to contract labor and which declares the contract labor clause inapplicable to "professional actors, artists, lecturers, singers, *nurses*, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or *persons employed as domestic servants.*" These are the identical classes mentioned in Section 2(d) of the Quota Law of 1921, here under consideration.

Reference to the Immigration Rules which were adopted on May 1, 1917, and which were in force at the time of the enactment of the Quota Law, enables one to appreciate what must have been understood by Congress as covered by these two categories at the time of such enactment.

Rule 27, Subdivision 2, on the subject of alien contract laborers, reads as follows:

> "Subd. 2. *Exemptions.* Aliens falling within the foregoing definition may be admitted to the United States, however, upon presenting satisfactory evidence that they are:
>
> (*a*) Professional actors;
> (*b*) Professional artists;
> (*c*) Professional lecturers;
> (*d*) Professional singers;
> (*e*) *Professional nurses* (*i.e., trained nurses holding diplomas from recognized nurses' training schools or hospitals*);

(*f*) Ministers of any religious denomination;

(*g*) Professors for colleges or seminaries;

(*h*) Persons belonging to any recognized learned profession;

(*i*) *Persons employed as domestic servants (i.e., employed in household affairs, as distinguished from work not immediately connected with the conduct of a family establishment, and as distinguished from personal service such as that rendered by valets and ladies' maids);*"

This demonstrates how unfounded is the fear that our interpretation of the statute would appreciably increase the number of immigrants. It would not precipitate a flood of immigration.

This is made even more certain by the Immigration Regulations approved by the Secretary of Labor and adopted under the Quota Law, as shown by the Seventh Edition of the Rules, page 97, promulgated in August, 1922, by which it is provided under Subdivision (b) of Rule 2:

> "*Aliens employed as domestic servants.* Domestic servants, for the purposes of the Act, are those only *who have actually been employed, either in the United States or any foreign country, in the household of the person or persons accompanying them or to whom destined in the United States, coming for the purpose of continuing such employment.*"

(*c*) Nor is there any virtue in the contention that it is the husband coming to this country, who is responsible for the separation which has occurred in his family, and that it is not the operation of our laws but his own act which has created the hardship of which complaint is made.

We are merely dealing with a class of immigrants who, by express provision of the statute, are

permitted to enter regardless of the Quota Law. As to them, we contend that the right granted implied immunity from enforced separation of the admissible class of immigrants from their families. The fact that these immigrants were given the unconditional right to enter the United States, indicates that Congress in conferring such privilege considered itself as giving expression to a sound principle of public policy and as believing that the admission of the enumerated classes promoted the public welfare. Otherwise they would not have been singled out for special consideration. That negatives the idea that it could have been contemplated that the persons thus virtually invited to come, were to be deprived of the companionship of their wives and children and were to be charged with what is the equivalent of their wilful abandonment, if they were not admitted by reason of the rigorous application of the Quota Law.

In the present case, Rabbi Gottlieb arrived here in 1920, before it was supposed that the quota principle would be incorporated into our law. He could not have anticipated that his wife and child would be debarred from entering for any such reason as that was urged by the petitioner. On May 10, 1921, he made a declaration of intention to become a citizen of the United States (*Rec., fol.* 51). From the time of his arrival he contributed to the support of his wife and child out of his earnings. He entered into a contract with a religious corporation to preach for it during a term of three years (*Rec., fols.* 48-51). He sent money to his family to bring them to the United States, and on May 19, 1921, a passport was issued to them by the Government of Palestine, and was visaed by the American Consul at Jerusalem on May 23, 1921. They departed from Jeru-

salem eight days after the passport was visaed, proceeded to Alexandria, whence they sailed to Marseilles and were detained for six months in France in an effort to secure transportation, although they had been supplied with steamship tickets (*Rec., fols.* 43-46). The Quota Law was not enacted until May 19, 1921.

To say, under these circumstances, that Rabbi Gottlieb has been responsible for the effort made by the Commissioner of Immigration during the past two years to deprive him of his family, merely adds the poignancy of injustice to the bitterness of his suffering.

(*d*) Nor is it a sound argument to assert that the exclusion of the respondents because the quota for 1921 had been exceeded at the time of their arrival, would not prevent their making an effort to enter during the next fiscal year or some year thereafter, and that the exclusion was not a permanent one.

In view of the fact that the total quota for Palestine is approximately 50 and that that quota might be exceeded in any year, or for that matter, in any month, while the respondents were on their way to the United States from a foreign port, it would afford them but little solace to be informed that they might try again in another year. In the meantime there are pending before Congress a number of bills by which it is sought to reduce the quotas; and there are even those who are advocating a total prohibition of immigration, and are thus adding to the difficulties encountered by those who are yearning for a reunited family group. It is not believable that Congress had it in mind to confer upon the families of the privileged immigrants such tender mercies as those dangled before their hungry hearts by the petitioner.

(*e*) The decisions principally relied upon by the petitioner are inapplicable here.

Zartarian vs. *Billings*, 204 U. S., 170, merely held that a child of a naturalized citizen of the United States who was born abroad prior to such naturalization, arriving here, but not permitted to land because she was afflicted with a dangerous contagious disease, was not entitled to admission because of the prohibition contained in the Immigration Act. That seemed to involve a brief separation only, of parent and child.

It was likewise decided that she was not to be regarded as a citizen of the United States because of the express limitation contained in Section 2172 of the United States Revised Statutes, that it was only children of a naturalized citizen "themselves dwelling in the United States" who became citizens as a result of their father's naturalization.

By Section 22 of the Immigration Act of 1917 such diseased children may now enter temporarily under certain conditions.

Low Wah Suey vs. *Backus*, 225 U. S., 460, was the case of a Chinese woman who could not be naturalized and who came to the United States after her marriage in China to a citizen of the United States. She acquired no status as a citizen because so married by reason of the limitations contained in Section 1994 of the United States Revised Statutes. It was found that, after her arrival here, she had violated the privilege of the Immigration Act by being in a house of prostitution. It was held that her marriage did not afford her immunity; and the case was distinguished from *United States* vs. *Mrs. Gue Lim* (*supra*) on obvious grounds, which are equally applicable here.

Yee Won vs. *White,* 256 U. S., 399, 402, was the case of the wife and minor children of a Chinese person who had been originally admitted to the United States as the son of one who at the time of entry was a merchant. He was therefore admissible under the decision in *United States* vs. *Mrs. Gue Lim* (*supra*). He subsequently changed his status and became a laborer, and then returned to China, where he married and had two children. He then returned to the United States with his wife and minor children. It was held that his change of status brought them outside of the scope of the decision in the case cited.

II.

The Quota Law does not authorize deportation because at the time when the immigrant arrives the quota assigned to his nationality has been exceeded.

The Quota Law is silent as to the consequences resulting from the existence of an excess of immigrants over the maximum number assigned to their respective countries. It does not purport to amend the Immigration Laws. It is merely an addition to and not in any way a substitute for them. It does not make the administrative provision of the Immigration Act applicable to the excess quota cases.

United States vs. *Woo Jan,* 245 U. S., 552.

Section 18 of the Immigration Act of 1917 contains a provision for deportation "unless in the opinion of the Secretary of Labor immediate deportation is not practicable or proper." Section 19 contains provisions for deportation in various contingencies which have no application here. Sec-

tion 21 provides for the giving of a bond in certain other cases in order to stay deportation.

Even if Section 18 of the Act of 1917 were to apply to cases of quota excesses, it would only be subject to the qualification just referred to, "unless in the opinion of the Secretary of Labor immediate deportation is not practicable or proper."

It would also be subject to the condition contained in the eighth proviso of Section 3 of the Act of 1917:

> "Provided further, that the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission."

The right of the Secretary of Labor with judicial approval to bond immigrants, even in the absence of an express statute, has long been exercised as an inherent power possessed by him.

A fact even more significant is that Section 9 of the Act of 1917, which penalizes steamship companies for bringing aliens to the United States whom they should have known to be inadmissible, was not extended to cover excess quota cases by any provision contained in the Quota Law of 1921. A provision relating to the subject was, however, enacted by the Act of May 11, 1922, long after the decision by the District Court in this case. How could the immigrants possessed of passports duly vised by Consuls of the United States, know whether or not at the time of their embarkation the quotas assigned to their countries had been exhausted or were approaching exhaustion? The Commissioner General of Immigration officially re-

ported, under date of September 23, 1921, that steamship companies could not be fined under the general provisions of the Act of 1917. He said:

> "The department has not endeavored to penalize steamship companies by levying administrative fines against them for bringing to ports of the United States aliens in excess of the quota limits of the act referred to; this for the reason that said act contains no provision authorizing it to do so, and there is no fine or penalty provided in the general immigration act (Act of Feb. 5, 1917) to which the Act of May 19, 1921, is an addition, which can possibly be construed as applicable. * * * The said Act makes no provision, however, for penalizing (either administratively or otherwise) steamship companies which bring aliens to the United States who are found to be ineligible for admission on other (and general) grounds. * * * There are now at some of our ports immigrant-laden vessels which, judging from present indications, will merely remain in port until the beginning of a new calendar month, when they will seek to discharge their alien passengers to the prejudice of aliens on other vessels, which have so timed their sailing as to arrive at, or shortly after the beginning of the month. * * * The department has no particular reason to believe that some (at least) of the steamship companies will not continue to bring them without particular regard to the question of whether or not they will be admitted. * * * The present disposition of the department is to charge the October quotas with these admissions (aliens admitted by the department under bond temporarily, though in excess of quotas), although there is the possibility that it will see fit to charge them against the quotas of some other month or months. * * * When the total amount of immigration permissible from some of these countries (coun-

tries with annual quotas ranging between 22 and 663) is divided into monthly allotments (as is necessary to do under the terms of the Act), it becomes apparent that even a moderate sized family would not be admitted all at one time—it would be necessary to return some of the members thereof, leaving them the option of remaining abroad or endeavoring again to reach a port of this country in a subsequent month before the quota for that month shall have become exhausted. * * * It would be of aid to the department in the matter of the enforcement of this law and would render more just and equitable its application to some of the smaller countries * * * if a change were made in its provisions which would permit of a larger immigration from these countries. * * * It is suggested that this minimum number be fixed at 1200."

Hearings for 1921 of House Committee on Immigration, pages 992-994.

Although there have been deportations under the Quota Law, on the ground that the quotas have been exceeded, they have been effected under a departmental regulation, not authorized by statute, reading:

"When the maximum number of aliens of any nationality who may be admitted in any period under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided by said Act, who may apply for admission during that period shall be referred to a board of special inquiry for appropriate action."

By this administrative fiat the general provisions of the Act of 1917 have been attempted to be applied to excess quota cases. This, it is believed, is illegal.

Morvill vs. *Jones,* 106 U. S., 466;
The Parthian, 276 Fed. Rep., 903.

A critical examination of the Quota Law shows that it is not only devoid of a provision for deportation, couched even in the vaguest terms, but, with a single exception, that it uniformly speaks only of *"aliens who may be admitted."* That phrase is found at the beginning of Section 2 (a) and of Section 2 (d); and at the end of the first sentence of the latter section, by way of antithesis, there occur the words "shall be excluded."

It will naturally be borne in mind that although aliens of a particular nationality may sail from countless foreign ports to numerous American ports, in vessels flying various flags, the statute is silent as to how quota distribution shall take place as between the different ports. It has been impossible for any one to ascertain in advance whether on arrival at any of our ports the quotas for any particular country have been exceeded or not. Nor is it possible to foretell which of the various passengers arriving here on the same vessel or at the same time are to be deemed admissible, and at what instant of time the quota limits will have been reached. It has sometimes been a matter of seconds as to whether the passengers of one vessel are to be admitted and those of another to be declared non-admissible, although both arrived on the same day and the fortunate vessel may have sailed several days later than that whose passengers have been, so to speak, regarded as "excess baggage."

Section 3 of the Quota Law contains provisions which require the Commissioner General of Immigration to publish certain statistics relative to the number of aliens of the various nationalities who may be admitted to the United States, and monthly statements showing the number of aliens of the nationality already admitted during the then current

fiscal year and the number who may be admitted under the provisions of the Act during the remainder of the year, and when seventy-five per cent. of the maximum number of any nationality admissible during the fiscal year shall have been admitted such statements are to be issued weekly thereafter. The Secretary of Labor is required to submit these statements to the Secretary of State, "who shall transmit the information contained therein to the proper diplomatic and consular officers of the United States, which officials shall make the same available to persons intending to emigrate to the United States and to others who may apply."

In spite of the vagueness of this provision, it was clearly intended to make it possible for our Consuls abroad to prevent excess quotas and thereby to avoid hardship to the intending immigrants by limiting the number of visas affixed to passports presented to them.

The Court will take judicial notice that from the time when we entered into the European war no aliens could come to this country except with passports visaed by our consular officers abroad. This was accomplished by the terms of Section 1 of the Passport Act of May 22, 1918. That law was made a part of our permanent legislation by the Act of March 2, 1921 (41 St. L., 1217).

The Permanent Passport Law had been favorably reported by the House Foreign Affairs Committee on January 31, 1921, about two weeks before the Quota Law was reported in the Senate. This report emphasized the desirability of preventing deportations here by the sifting of immigration abroad (Cong. Record, Vol. 60, page 2401; House

Report No. 1280 of the 66th Cong., 3rd Session). To ensure its passage, the Senate Committee made the proposed law a rider to the "Diplomatic and Consular Appropriation Bill," reported on February 10, 1921. It passed the Senate on February 18, 1921; was accepted by the Conference Committee and duly approved by President Wilson March 2, 1921, becoming Public Act No. 357 (Cong. Record, Vol. 60, pages 2892, 3373, 3374-18, 3801, 3909 and 14, 3859, 3896, 3841).

When the Quota Act was under consideration, Senator Colt, Chairman of the Senate Committee on Immigration, alone discussed the method of winnowing out the inadmissibles under this measure. On February 19, 1921, when it was not yet certain that the Passport Law would become permanent legislation, he said (Cong. Record, Id. page 3455):

> "*Selection must largely be at the source.* It may be a matter of diplomatic regulation, through the consuls and the immigration commissioners of foreign countries * * *. *Of course, we could say we might do it under the visa system.*"

After the bill passed the Senate, it was acted upon by a Conference Committee which reported (Cong. Record, page 3965):

> "Provisions of treaties, conventions and agreements with various countries are not disturbed by the bill as amended."

In the House, Mr. Johnson, Chairman of the House Committee on Immigration, in charge of the bill and a member of the Conference Committee, in the course of the debate said (Id. page 3966):

> *"The in free provision under certain conditions is necessary to prevent possible individual hardships,* and answers criticisms on that score. *It is not planned to shut out by ones and twos those who have arrived at our gates, and who pass all the other immigration requirements. Gentlemen will notice the clause which provides that not over twenty per cent. admitted in a year may come in a month. It is that to which I have just been referring."*

After President Wilson's pocket veto of the Quota Law, when first passed, practically the identical bill was re-introduced and passed on May 19, 1921, at the special session of Congress. Meantime, as we have shown, the Passport Act had been made permanent, and the House Committee report (No. 4 of the 67th Cong., 1st Session, dated April 19, 1921, page 8), points out that it was then incidentally recognized that the quotas were to be regulated through our consuls abroad. It was there stated:

> "Provisions of treaties, conventions and agreements with various countries are not disturbed by the bill. Should any country which has made an agreement with respect to the limiting of immigration *elect to act under the provisions of this bill, and give passports to its nationals to the number of three per cent. of its people in the United States on the census of* 1910, *that step would itself end the agreement."*

During the debate in the House, Chairman Johnson, who was in charge of the measure, on April 20, 1921 (Cong. Record, Vol. 61, page 500) answered an inquiry as follows:

> "Mr. Sinnott: *'In case more than three per cent. applied to come to our country from some*

foreign country, in case, say five per cent. apply, who makes the selection of the three per cent.?'

Mr. Johnson of Washington: *'Incoming aliens come with passports. They must have passports from their Governments and vises of those passports by our consular agents. Should there be a surplus from any country undertaking to seek passport vises, the consular agent at that particular place would have, on the information here of the number which can be received, to refuse further vises.'*

Mr. Sinnott: *'Would the consular agent calculate on the three per cent. from the foreign country?'*

Mr. Johnson of Washington: *'No. His power to vise would not go beyond the number that might be permitted to proceed to the States."*

Resort to these statements made by those in charge of the bill, on its passage, in the course of the debates, which is permissible (*Duplex Co.* vs. *Deering*, 254 U. S., 443, 474, 475), makes it absolutely clear that Congress had no idea that deportations for mere excess of annual or monthly quotas were to take place from our shores from among holders of visaed passports. That was attempted to be accomplished solely by the departmental regulations, which were not authorized by the statute. It is, moreover, significant, that the construction contended for, to make consular action conclusive as to quota limits, is precisely in line with new bills to extend this Quota Act, through "consular certificates" provided for, as reported by the House Committee on Immigration on February 15, 1923 (House Report No. 1621, of 67th Cong., 4th Session, page 15) and February 9, 1924 (House Report No. 176 of 68th Cong., 1st Session, page 5).

An authoritative and important decision under the Chinese Exclusion Laws, gave relief under somewhat similar circumstances, even where the beneficiaries were not the innocent and hapless victims of others, as is the case here.

As is well known, nearly all the Chinese in the United States in 1892, refused to register under Section 6 of the Geary Act of that year, having been advised by distinguished counsel that the Act was unconstitutional. In consequence, more than 90% of the 100,000 Chinese in the United States were subject to deportation when that anomalous law was sustained by a divided court in the *Fong Yue Ting* case (149 U. S., 698) on May 15, 1893, shortly after the time to register had expired. Although they had been recalcitrant, and not merely as the respondents here, the unfortunate victims of an untoward fate, they had been misled. President Cleveland thereupon urged Congress to afford further time for registration (9 Richardson's Messages of the Presidents, 436), and Congress adopted his suggestion on November 3, 1893. Meantime, however, deportations would have taken place between May and November, but Judge Lacombe in the U. S. Circuit Court for the Southern District of New York, held in *habeas* proceedings that the statute which contained the provision, "ordered that he (the unregistered person), be deported from the United States as hereinbefore provided," was too indefinite to authorize deportation.

In re Ng Look, 56 Fed. Rep., 81.

In an earlier provision of the Geary Act, Section 2 (copied in 149 U. S., 670 at 691), Congress had provided that persons convicted or adjudged to be

not lawfully entitled to be or remain in the United States "shall be removed from the United States to China, unless he or they shall make it appear * * * that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country," with a further proviso that deportation should be to China, if such other country demands a head tax as a condition of entry of Chinese into it. Section 4 (id. page 700) also provided for sentence of hard labor for not over a year, and removal thereafter from the United States as hereinbefore provided."

On deciding in May, 1893, that the Geary Law provision for deportation was too indefinite to be enforced Judge Lacombe said:

> "The sixth section says that it shall be the duty of the judge 'to order his deportation from the United States as hereinbefore provided.' Examination of the prior sections of the act, however, discloses no provisions for such deportation. The most that I can do, therefore, is to order his deportation whenever provision shall be made for the same by the proper authority—presumably, by Congress—though some other act, to which my attention has not been called, may contain sufficient provision for this, in which case no further legislation would be needed. I find no provision authorizing the United States Judge, in such cases, to order the person found without certificate *to be imprisoned for an indefinite time, while awaiting deportation*, and therefore shall discharge him from immediate custody. This order will presumably be sufficient warrant for his future removal, when some proper officer appears, charged with the duty, and clothed with the authority, so to remove him."

Attorney General Olney acquiesced in Judge Lacombe's opinion, and no deportations took place except of persons who subsequently did not comply with the Amendatory Act of November 3, 1893, which conferred six months more time for registration. (See also Coolidge's Chinese Immigration, page 224 *et seq.*, for a detailed account of this incident.)

In an important decision concerning "alleged stowaways," which was accepted by the Immigration authorities, *U. S. ex rel. D'Amato* vs. *Williams*, 193 F., 228, *it was held that Congress did not intend deportation of innocent persons, coming over here in good faith, without knowing that some provision of the Act was being unconsciously violated.* Judge Learned Hand said:

> "The special provision laid down for the enforcement of manifests, which contain no provision for deportation, seems to me to indicate that Congress meant to limit the first words of Sec. 19 to the excluded classes mentioned in Sec. 2. * * * *I am not inclined to visit the sins of the ship's master upon the aliens, provided they are not in privity with him.*"

See also

> *Tsoi Sun* vs. *United States*, 116 Fed. Rep., 920.

The language of Mr. Justice Holmes in *Gegiow* vs. *Uhl*, 239 U. S., 9, 10, is very much in point:

> "The statute by enumerating the conditions upon which the allowance to land may be denied, prohibits the denial in other cases. And when the record shows that a commissioner of immigration is exceeding his power, the alien

may demand his release upon *habeas corpus.* The conclusiveness of the decisions of immigration officers under Sec. 25 is conclusiveness upon matters of fact. This was implied in *Nishimura Ekiu* vs. *United States,* 142 U. S., 651, relied on by the Government. As was said in *Gonzales* vs. *Williams,* 192 U. S., 1, 15, 'as Gonzales did not come within the act of 1891, the Commissioner had no jurisdiction to detain and deport her by deciding the mere question of law to the contrary.' Such a case stands no better than a decision without a fair hearing, which has been held to be had. *Chin Yow* vs. *United States,* 208 U. S., 8. See further, *Zakonaite* vs. *Wolf,* 226 U. S., 272; *Lewis* vs. *Frick,* 233 U. S., 291, 297 * * *."

"In the Act of February 20, 1907, Chap. 1134, § 2; 34 Stat., 898; as amended by the Act of March 26, 1910, Chap. 128, § 1; 36 Stat., 263, determining who shall be excluded, 'Persons likely to become a public charge' are mentioned between paupers and professional beggars, and along with idiots, persons dangerously diseased, persons certified by the examining surgeon to have a mental or physical defect of a nature to affect their ability to earn a living, convicted felons, prostitutes and so forth. The persons enumerated in short are to be excluded on the ground of *permanent personal objections accompanying them,* irrespective of local conditions, unless the one phrase before us is directed to different considerations than any other of those with which it is associated."

See also

32 *Opinions Attorney General,* 209.

The facts bearing on the proposition discussed under this Point were presented by the record, as to which an issue was presented by the traverse

to the return (*Rec.*, fols. 15, 38, 41). At all events, respondents may sustain the adjudication in their favor upon any ground supported by the law.

III.

For these reasons and those urged in our main brief, it is respectfully submitted that the judgment appealed from should be affirmed.

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Respondents' Counsel.

all others of such nationality applying during the same year shall be excluded, except (*inter alios*) ministers of religion, and gives preference, so far as possible, in the enforcement of the act, to the wives, children, etc., of citizens of the United States, of aliens here who have applied for citizenship, or of persons eligible to citizenship who have served in our military or naval forces. *Held*, that the wife and child of a minister have no right to admission when the quota allowed their nationality is exhausted. P. 313.

285 Fed. 295, reversed.

CERTIORARI to a judgment of the Circuit Court of Appeals affirming a judgment of the District Court discharging two aliens by *habeas corpus*.

Mr. George Ross Hull, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for petitioner.

Mr. Louis Marshall, with whom *Mr. Joseph G. M. Browne, Mr. Barnet E. Kopelman, Mr. J. Philip Berg* and *Mr. Max J. Kohler* were on the briefs, for respondents.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The respondents are the wife and infant son of Solomon Gottlieb, a rabbi of a synagogue in New York City. They are natives of Palestine who sought admission to this country in December, 1921.

After a hearing before the Board of Special Inquiry at Ellis Island, they were ordered deported, on the ground that the quota of immigrants entitled to be admitted had already been filled. Upon *habeas corpus* proceedings in the Federal Court for the Southern District of New York it was held they were entitled to admission, irrespective of quota limitations, as the wife and child of a minister, who was already here under § 2 (d) of the Act of May 19, 1921, c. 8, 42 Stat. 5, as amended May 11, 1922, c. 187, 42

Stat. 540. Thereupon they were ordered discharged. This judgment was affirmed by the Court of Appeals. 285 Fed. 295.

That court reached its conclusion by considering § 3 of the Act of 1917, c. 29, 39 Stat. 874, 875, *in pari materia* with § 2 (d) of the Act of 1921. Section 3 of the earlier act enumerates various classes of aliens who are excluded from admission into the United States, among them all persons from certain Asiatic territory with specified exceptions. The Act of 1921, as amended, is an act to limit the number of aliens who may be admitted under the immigration laws to the United States, and is declared to be "in addition to and not in substitution for the provisions of the immigration laws." § 4. Section 2 (d), among other things, provides that when the maximum number of aliens of any nationality shall have been admitted, all others of such nationality applying during the same year shall be excluded, except as otherwise provided in the act. Following this, one of the provisos enumerates the aliens who are thus excepted, among them, ministers of any religious denomination. Another proviso is: "That in the enforcement of this Act preference shall be given so far as possible to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancées, (1) of citizens of the United States, (2) of aliens now in the United States who have applied for citizenship in the manner provided by law, or (3) of persons eligible to United States citizenship who served in the military or naval forces of the United States," etc.

The court below, taking these various provisions together, held that under § 3 of the Act of 1917, these respondents were entitled to admission.

The lower court was right in holding that the acts are *in pari materia*, and that § 3 of the earlier act is still fully operative and may be considered as though it formed a part of the later act. The question then is

whether it includes aliens occupying the status of these respondents. The case, as the evidence shows, is one of peculiar and distressing hardship and it is not unnatural that any appropriate canon of construction should be laid hold of to justify a conclusion favorable to the respondents. But if the plain words of the statute are against such a conclusion, leaving no room for construction, the courts have no choice but to follow it, without regard to the consequences. *Chung Fook* v. *White*, 264 U. S. 443; *Zartarian* v. *Billings*, 204 U. S. 170; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 476. Section 3 of the Act of 1917 defines and enumerates the classes of aliens who are to be excluded—idiots, imbeciles, feeble-minded persons, paupers, professional beggars, diseased persons, criminals, polygamists, anarchists, prostitutes, and numerous others, the last in the enumeration being natives of islands not possessed by the United States adjacent to the continent of Asia and of the continent within certain described limits of latitude and longitude. The clause relied upon immediately follows: "The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, *ministers* or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, *nor to their legal wives or their children* under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States. . . ."

The limited scope of this exception is apparent and no amount of discussion could make it plainer. It applies to "the provision next foregoing," namely, to that dealing with aliens coming from the barred Asiatic zone, and to that only.

Section 2 (d) of the Quota Law of 1921, as amended, in terms, permits the admission of "aliens returning from a

temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, *ministers of any religious denomination*, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants," notwithstanding the quota of the same nationality has been filled. Then follows the further proviso already quoted that in the enforcement of the act "preference shall be given so far as possible to the wives . . . children," etc., of certain enumerated classes.

The respondents are not natives of the barred Asiatic zone and, therefore, are not entitled to admission under the exception in the Act of 1917. There is nothing in the later Act of 1921, as amended, which gives the wife or children of a minister any right of entry beyond that enjoyed by aliens generally, unless he falls within one of the classes specified in the proviso to § 2 (d), in which event they are to be given preference over other aliens within the limits of the quota. The quota having been exhausted, no case was presented calling for the application of the proviso, even if the respondents could otherwise have been brought within its terms. The contention that it is absurd and unreasonable to say that the wives and children of ministers from the barred Asiatic zone are to be admitted and those outside of it denied admission, does not require consideration, since the result we have stated necessarily follows from the plain words of the law, for which we are not at liberty to substitute a rule based upon other notions of policy or justice. That aliens from one part of the world shall be admitted according to their status and those from another part according to fixed numerical proportions, is a matter wholly within the discretion of the lawmaking body, with which the courts have no authority to interfere.

Reversed.

COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK *v.* GOTTLIEB ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 221. Argued April 15, 16, 1924.—Decided May 26, 1924.

1. When the plain words of a statute leave no room for construction, the courts must follow it, however harsh the consequences. P. 313.
2. Section 3 of the Immigration Act of 1917 and § 2(d) of the Quota Law of 1921, as amended May 11, 1922, are both operative and should be construed as acts *in pari materia*. P. 312.
3. Section 3 of the Immigration Act of 1917, after an enumeration of excluded classes ending with the natives of a designated part of Asia and those of certain islands adjacent to that continent, declares that "the provision next foregoing" shall not apply to persons of various named occupations, including ministers of religion, nor to their legal wives or their children under 18 years, etc. *Held*, that the exception applies only to aliens coming from Asiatic regions referred to. P. 313.
4. Section 2(d) of the Quota Act provides that when the maximum number of aliens of any nationality shall have been admitted,